

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 1:17-cr-193

6 vs.

7 ALEX ALBERTO CASTRO,
8 MICHAEL YADELL NELSON,
9 SOLON TATUM, DANTE ANDRE HOWARD,
10 ERIKA ATKINSON, MAX AVERY,
11 ANDREA THOMPSON, AARON LEON COX,

Defendant.
12 _____/

13 VOLUME X (PAGES 2385-2625)

14 TRANSCRIPT OF JURY TRIAL

15 BEFORE THE HONORABLE ROBERT J. JONKER, CHIEF JUDGE

16 GRAND RAPIDS, MICHIGAN

17 October 22, 2018

18
19 Court Reporter: Glenda Trexler
20 Official Court Reporter
21 United States District Court
22 685 Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

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25

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* * * * *

Grand Rapids, Michigan

October 22, 2018

8:36 a.m.

P R O C E E D I N G S

*(Judge, jury, counsel, and parties present in the
courtroom)*

THE COURT: Well, good morning everybody. Welcome back to your second Monday in the chair. No poem today, though. It's a different kind of week. We can call it, though, I think, a day of illumination for several reasons. 139 years ago today in Menlo Park, New Jersey, Thomas Edison perfected the first working lightbulb, so all of the illumination we have in our court here and everywhere else we can think back to Thomas Edison today.

But more importantly, this will be a day of illumination in a different way for all of you because you're going to hear something different after we finish the proofs. We're first going to finish whatever proofs there are on the defense side, hear if the government has any rebuttal proofs, then you'll get some instructions from me -- and hopefully they will be illuminating -- but more importantly, you'll start hearing and maybe finish hearing from all the lawyers today in closing argument. Which is the opportunity for you to hear from each of the lawyers how they put together what we've all been listening to for the last couple of weeks. There's an

1 awful lot of information that you've been listening to and
2 receiving, and each of the lawyers will now have that chance to
3 argue to you what it all means for their case. And that's why
4 I think it's a good thing that our day today coincides with
5 Edison's creation of the lightbulb 139 years ago, because all
6 of those things, I hope, will illuminate your day today in a
7 different way.

8 A pretty nice weekend in other respects too.
9 Depending on how you feel about Michigan or Michigan State. My
10 family is a house divided on that. I'm University of Michigan,
11 both of our kids went to Michigan State, so I was happier than
12 they were over the weekend. But that's not unusual.

13 So why don't we get back to it. I think when we
14 broke off on Friday we were in the middle of Mr. Tatum's case,
15 so, Ms. Chartier, we'll turn it over to you for the next
16 witness on your side of the case.

17 *MS. CHARTIER:* Thank you, Your Honor. We call
18 Gabe Holmes.

19 *THE CLERK:* I'll swear you in first. Please raise
20 your right hand.

21 GABRIEL HOLMES

22 *(The oath was administered)*

23 *THE WITNESS:* I do.

24 *THE CLERK:* Thank you.

25

1 DIRECT EXAMINATION

2 BY MR. NYAMFUKUDZA:

3 Q. Good morning. Would you please state your name and spell
4 it for the record, please.

5 A. Gabriel, G-A-B-R-I-E-L, last name Holmes, H-O-L-M-E-S.

6 Q. Do you mind introducing yourself to the ladies and
7 gentlemen of the jury.8 A. Yeah, my name is Gabriel Holmes. I'm an employee with the
9 Kent County Juvenile Detention Center. I've been there for
10 several years now. And I have some strong ties within the
11 community working with youth in the community as well, so . . .12 Q. Thank you for that. I'm going to focus you very quickly
13 on the reason that -- well, I know that you're here. We're
14 going to talk about Mr. Tatum.

15 Do you know Solon Tatum?

16 A. Yes, I do.

17 Q. How so?

18 A. Um, myself and Solon, we've played basketball together
19 over the years. We kind of built a strong tie because of that.
20 We also participated within the same men's ministry, sort of
21 like a Bible study that we did with the Salvation Army. And so
22 our relationship from there just grew stronger.23 Q. Okay. I'm not going to go into all of those things that
24 you did together, but I want to fast forward you and we're
25 going to focus now on the years of 2016 through 2017.

1 Has Mr. Tatum ever cut your hair?

2 A. Yes.

3 Q. Do you know about a location called Gifted Hands?

4 A. Yes, I do.

5 Q. Where was that located?

6 A. Um, Eastern -- Bates, Eastern, and Franklin area.

7 Q. What side of town is that in?

8 A. Southeast side.

9 Q. Of Grand Rapids?

10 A. Yes.

11 Q. Roughly how many times from the years of 2016 through 2017
12 did you go to that shop, Gifted Hands?

13 A. At least every other week.

14 Q. And why did you go to Gifted Hands?

15 A. Solon is the best at cutting hair, at least in my opinion,
16 so I just went there for the haircut.

17 Q. Generally what time of day would you go to Gifted Hands?

18 A. Um, generally it's morning, early afternoon.

19 Q. And I see that your facial hair is a little bit longer
20 than mine. Did Mr. Tatum just work on your hair or your face
21 or both?

22 A. Both.

23 Q. Was the shop busy each time that you went?

24 A. Yes. For the most part absolutely. It was extremely
25 busy, yeah.

1 Q. And what does busy mean to you?

2 A. Um, to the point where I would have to call sometimes
3 ahead of time to make sure that I'm not six, seven, you know,
4 possibly eight down the line before getting a haircut, so . . .

5 Q. Were there other barbers in the shop when you went?

6 A. Yes.

7 Q. As well as customers?

8 A. Yes.

9 Q. I'd like to focus now on what we've heard described by
10 other witnesses as tools of the trade.

11 Have you ever trimmed your beard or lined it up on your
12 own?

13 A. Yes.

14 Q. What do you use for that?

15 A. Um, T liners.

16 Q. T liners. We've heard about those too. Do you have any
17 training as a barber?

18 A. No. No.

19 Q. Who helped you keep your clippers in good working
20 condition?

21 A. Solon.

22 Q. What did he do?

23 A. Um, I seen how he, you know, managed his clippers, and,
24 you know, kept his clippers clean, so I asked him if he could
25 help keep mine clean. So he would get them, clean them, you

1 know, take caps off or whatever you call them, I don't know the
2 technical terms for them, but he would clean them out for me,
3 oil them for me.

4 Q. Did that happen more than once?

5 A. Um, I would say probably, yeah, about a couple times. A
6 few times.

7 Q. Did he charge you for that?

8 A. No.

9 Q. And would you say it was helpful? Whatever he did,
10 whether it was removing caps and changing blades, we've heard
11 that too.

12 A. Uh-huh.

13 Q. It was?

14 A. Yes, it was helpful.

15 Q. And how long generally would it take once you gave him or
16 he took your clippers until you got them back, your T liners?

17 A. You know, a couple days maybe. You know, it's mainly on
18 me to find the time to just come back and get them. But he'd
19 be done immediately just about, and I would just have to go
20 there and pick them up, so . . .

21 Q. Thank you, Mr. Holmes. I have no further questions.

22 THE COURT: Mr. Baker.

23 MR. BAKER: Thank you, Your Honor.

24

25

CROSS-EXAMINATION

BY MR. BAKER:

Q. Good morning, Mr. Holmes.

A. Good morning.

Q. Is it fair to say you and Solon Tatum are friends? Is that a good categorization, sir?

A. Yes.

Q. When you picked up the T liners after Mr. Tatum worked on them, would you go to his barber shop to get them?

A. Yes.

Q. Mr. Holmes, were you aware that Mr. Tatum never received his license to be a barber?

A. Yes.

Q. Were you aware that he never paid taxes on the money that he made as a barber at Gifted Hands?

A. I can't -- I can't speak to that.

Q. Would it surprise you that he claims that he made over \$110,000 a year in cash as a barber at Gifted Hands?

A. Again, I can't speak to that.

MR. BAKER: I don't have any further questions, Your Honor.

THE COURT: All right. Any redirect?

MR. NYAMFUKUDZA: No, Your Honor. Thank you.

THE COURT: All right. Well, that was a short stay. You may be excused.

1 And we'll go to your next witness.

2 *MS. CHARTIER:* Thank you, Your Honor. We will be
3 calling Buster Laird.

4 *THE CLERK:* I'll swear you in first.

5 *THE COURT:* All right. If you could just stand there
6 and Ms. Khayat Bratt will swear you in.

7 EDDIE LAIRD

8 *(The oath was administered)*

9 *THE WITNESS:* I do.

10 DIRECT EXAMINATION

11 *BY MR. NYAMFUKUDZA:*

12 Q. Good morning, Mr. Laird.

13 A. Good morning.

14 Q. Would you state your name and spell it for the record,
15 please.

16 A. Eddie Laird, E-D-D-I-E, Laird L-A-I-R-D.

17 Q. Mr. Laird, where do you live?

18 A. In Kentwood. 1116 -- do you want the address?

19 Q. Well --

20 A. Grand Rapids, Michigan.

21 Q. I don't need the address. Thank you.

22 What do you do for a living, Mr. Laird?

23 A. I DJ and I work at Tubelite.

24 Q. Have you ever done any parties for famous people?

25 A. Yeah, all the time. All the time.

1 Q. Any that we may know?

2 A. 50 Cent, Two Chainz, Cedric the Entertainer,
3 Floyd Mayweather. The list goes on and on.

4 Q. It sounds like fun work.

5 A. Yes, fun work.

6 Q. Do you know Solon Tatum?

7 A. Yes.

8 Q. Have you ever been to his barber shop?

9 A. Yes.

10 Q. Do you know what the name of that shop was?

11 A. Um, it was Wealthy Styles. You had Gifted Hands. He had
12 switched the name once he moved.

13 Q. Now I'm going to focus you just on the years of 2016
14 through 2017. That's the relevant time frame for this
15 testimony.

16 A. Okay.

17 Q. When you went to Gifted Hands -- let me rephrase that.

18 How many times approximately -- I don't expect to you say
19 exactly -- but about how many times did you go to Gifted Hands?

20 A. Like every week. Like once every week.

21 Q. And we know also that in barber shops people have their
22 hair worked on or their facial hair. Which one of those did
23 Mr. Tatum do for you?

24 A. Facial hair. Haircut. Clippers.

25 Q. No eyebrows?

1 A. No eyebrows.

2 Q. Okay. Were there other barbers in the shop when you went
3 to Gifted Hands?

4 A. Yes.

5 Q. Were there other customers?

6 A. Yes.

7 Q. Would you describe it as a busy location?

8 A. Yes, a very busy location.

9 Q. What time typically would you go to Gifted Hands when you
10 went?

11 A. Um, it depends on availability, openings. On my work
12 schedule. Sometimes it was an afternoon. Sometimes it was in
13 the evening. So it varies.

14 Q. And still every time that you went it was busy?

15 A. Yes.

16 Q. You mentioned clippers, and I'd like to focus on that for
17 just a brief amount of time.

18 Did you ever trim your own beard or line your hair up
19 outside of the barber shop?

20 A. Yes.

21 Q. What did you use to perform that task?

22 A. Some liners.

23 Q. Liners. And do you have any training as a barber?

24 A. Do I have any training as a barber?

25 Q. Yes.

1 A. No, I don't have any training as a barber.

2 Q. So we've heard that those liners should be kept in good
3 working condition. Who did that for you?

4 A. Solon Tatum.

5 Q. How many times did he work on your clippers for you?

6 A. Um, I don't know approximately how many times, but I know
7 he had changed his blade on his liners frequently, so sometimes
8 when I'm there I would be like "Can you put a new blade on my
9 clippers?" Or "Can I get, you know, a brand-new blade?"

10 Q. Did he ever charge you for that?

11 A. No.

12 Q. Whatever it is that he did for your clippers each time,
13 was that helpful --

14 A. Yes.

15 Q. -- in terms of how the clippers operated after he
16 performed that service?

17 A. Yes.

18 Q. And, again, generally how long did it take for him to work
19 on your clippers? I know sometimes you said he would do it on
20 the spot, but were there times that you left your clippers with
21 him?

22 A. Sometimes I left them with him and finally came back and
23 picked them up at Gifted Hands.

24 Q. On average about how much time would pass between the time
25 you dropped them off and picked them back up?

1 A. It could have been a day. It could have been the same
2 day. It depends on how busy he is.

3 Q. Okay. Mr. Laird, I have no more questions. Thank you for
4 your time.

5 *THE COURT:* Mr. Baker.

6 *MR. BAKER:* Thank you, Your Honor.

7 CROSS-EXAMINATION

8 *BY MR. BAKER:*

9 Q. Good morning, Mr. Laird.

10 A. Good morning.

11 Q. When you picked up the clippers that Mr. Tatum worked on
12 for you, would you do it at the barber shop?

13 A. Would I do -- can you repeat that, please?

14 Q. Yes. Would you pick them up from Mr. Tatum at the barber
15 shop?

16 A. Yes, usually he would do them there. If I leave them,
17 sometimes I'll come back.

18 Q. Thank you, sir. I don't have any further questions,
19 Your Honor.

20 *THE COURT:* All right. That's real short. So you
21 can be excused. Thank you, Mr. Laird.

22 We'll go to your next witness.

23 *MS. CHARTIER:* Our final fact witness other than
24 Agent Guidice will be a gentleman named Harry Knowling, and
25 I'll get him right now.

1 *THE CLERK:* I'll swear you in first, please.

2 HARRY KNOWLING

3 *(The oath was administered)*

4 *THE WITNESS:* Yes.

5 DIRECT EXAMINATION

6 *BY MR. NYAMFUKUDZA:*

7 Q. Good morning, Mr. Knowling.

8 A. Good morning.

9 Q. Would you please state your name for the record and spell
10 it.

11 A. Harry Knowling, H-A-R-R-Y, Knowling, K-N-O-W-L-I-N-G.

12 Q. Mr. Knowling, where do you live? We don't need the
13 physical address, just the city.

14 A. Grand Rapids, Michigan.

15 Q. How long have you lived in Grand Rapids?

16 A. My whole life.

17 Q. What do you do for a living, Mr. Knowling?

18 A. Barber.

19 Q. I want to focus on the reason I'm sure you understand
20 you're here.

21 A. Yes.

22 Q. Talking about Mr. Tatum. Do you know Mr. Tatum?

23 A. Yes.

24 Q. Did you ever work together?

25 A. Yes.

1 Q. Where?

2 A. At Gifted Hands barber shop.

3 Q. So going forward I'm going to be focusing on the years of
4 2016 through 2017. Is that all right?

5 A. Yes.

6 Q. Did you pay weekly rental --

7 A. Yes.

8 Q. -- for your workstation?

9 A. Uh-huh.

10 Q. Is that a "yes"?

11 A. Yes.

12 Q. Who received that weekly payment, Mr. Knowling?

13 A. Solon.

14 Q. How many other barbers worked at Gifted Hands?

15 A. Six others. Yes.

16 Q. Is that including Mr. Tatum?

17 A. Including Mr. Tatum, yes.

18 Q. Do you remember their names?

19 A. Rick, QB, Kal, Avery, me, Solon.

20 Q. Was there any sharing of chairs or booths? We've heard
21 them described both ways.

22 A. No.

23 Q. Who pulled in the most customers, Mr. Knowling?

24 A. Solon.

25 Q. What hours did you and the others generally work at

1 Gifted Hands?

2 A. Eleven -- like 11 or 12 to 7. There wasn't really a set
3 time, but normally everybody was there by 12 noon.

4 Q. And what days of the week was -- what days was
5 Gifted Hands open?

6 A. Tuesday through Saturday.

7 *MR. NYAMFUKUDZA:* Permission to approach, Your Honor?

8 *THE COURT:* Sure.

9 Q. (BY *MR. NYAMFUKUDZA*) Mr. Knowling, I've just handed you
10 what's been marked as Defense's Proposed Exhibits 7A through E.
11 Were you present when those photographs were taken?

12 A. Yes.

13 Q. Do you remember whether it was during the week or the
14 weekend when they were taken?

15 A. It was during the week.

16 Q. Daytime or nighttime?

17 A. Daytime.

18 Q. I'm going to ask you to please flip through those
19 photographs and let me know whether that is an accurate
20 depiction of Gifted Hands as it appeared on that day.

21 *MR. BAKER:* Objection, Your Honor, I'd just ask for a
22 date and time.

23 *THE COURT:* Can you specify the rough date that we're
24 talking about? If he was there when they were taken.

25 Q. (BY *MR. NYAMFUKUDZA*) Summer of 2017. Does that ring a

1 bell?

2 A. Yes. End of summer.

3 *MS. CHARTIER:* That would not -- if I may,
4 Your Honor, I can pull the exact date if the Court would give
5 me one moment.

6 *THE COURT:* Well, it's not you who is testifying.
7 Let's find out if he can put a date range in and close in on
8 approximately when it was taken. If he knows.

9 Q. (BY MR. NYAMFUKUDZA) Could you think back to perhaps not
10 the specific date but month?

11 A. Um, it was --

12 Q. Was it after Mr. Tatum's arrest?

13 A. Yes.

14 Q. And do you know when he was arrested?

15 A. Um, September 2017, I believe.

16 Q. Okay.

17 A. But it was -- it was definitely after.

18 Q. Okay. So I think that would be after the summer.

19 *MR. NYAMFUKUDZA:* But with that, Your Honor, I would
20 ask that it be admitted into evidence, 7A through E.

21 *MR. BAKER:* Your Honor, I object to relevance.

22 *THE COURT:* Well, I think you brought it up yesterday
23 when you asked Mr. Tatum if there were any pictures of the
24 barber shop, so I'll overrule the relevance objection, and it
25 can be admitted.

1 7A through E?

2 MR. NYAMFUKUDZA: Yes, Your Honor.

3 THE COURT: All right.

4 Q. (BY MR. NYAMFUKUDZA) Let's start first with 7A.

5 MR. NYAMFUKUDZA: Would you pull that up, please,
6 Ms. Thelen.

7 Q. (BY MR. NYAMFUKUDZA) Would you describe what we see
8 there.

9 A. Yes. Okay, so this over here would be Solon's station.
10 Just a TV, and that's just for customers. This station was
11 Rick. And this was my station right here in the corner.

12 Q. Okay. Now, Mr. Knowling, other than the gentleman in the
13 mirror, I don't see --

14 A. Oh, yeah.

15 Q. Who is that gentleman?

16 A. That's Avery.

17 Q. And is that the barber who worked at Gifted Hands?

18 A. Yes, correct.

19 Q. Were there any other people there when these photographs
20 were taken?

21 A. Yes.

22 Q. Did you see them move before they were taken?

23 A. Yes.

24 Q. Why did they move?

25 A. They didn't want to be in the photograph.

1 *THE COURT:* I think you're going to have to lay
2 foundation for that. And if you found out only because of what
3 they said, then we've got a hearsay problem.

4 *MR. NYAMFUKUDZA:* Understood.

5 *Q.* *(BY MR. NYAMFUKUDZA)* But there were other people in the
6 shop when these photographs were taken?

7 *A.* Yes.

8 *Q.* Do you remember who these people were?

9 *A.* Yes.

10 *Q.* Customers or barbers?

11 *A.* Oh, it was barbers and customers there, yeah.

12 *Q.* Do you remember any names?

13 *A.* Avery was there. Another barber. QB was there. And I'm
14 not -- I don't remember the customers' names, but it was a
15 customer and his mother were there also.

16 *Q.* Were you there?

17 *A.* I was there, yep. You were there. Rick. And Magic Man,
18 a guy who used to be around the barber shop all the time.

19 *Q.* Thank you. I'm going to move to the next photograph,
20 please.

21 Okay. There we go. Would you describe what we see in
22 this photograph, please, Mr. Knowling.

23 *A.* Yeah, this one is a shot from towards the back looking out
24 to the front towards the street. And then like you said, these
25 red chairs are for customers. And that's another workstation.

1 That one would be too. And then the other two, my chair and
2 Rick's chair.

3 Q. Okay. And would you describe this as an open layout,
4 Mr. Knowling?

5 A. Yes.

6 Q. So while you were working, people could see what you were
7 doing?

8 A. Oh, yeah. Yes.

9 Q. Could you hear what others were saying?

10 A. Yes.

11 MR. NYAMFUKUDZA: Okay. Next photograph, please.

12 Q. (BY MR. NYAMFUKUDZA) Would you describe what we see in
13 this photograph.

14 A. Yep. That's QB. He's performing a haircut. And then
15 that's -- that's you right there. Great photography.

16 Q. Thank you.

17 A. And again this -- this is the client's mother in the
18 chair. She was there also. This is Avery's workstation here.
19 And this is where Phil was.

20 Q. Now, I see a gentleman performing a haircut. What did you
21 say his name is?

22 A. That's QB.

23 Q. And that's not the same gentleman that we saw in the first
24 photograph?

25 A. No.

1 Q. His name was Avery?

2 A. Correct.

3 Q. And I see a couple of red chairs.

4 A. Yeah. Oh, yeah, more -- that's where the customers sit,
5 yep.

6 Q. Okay. The next photograph, please. Would you describe
7 what we see in this photograph, Mr. Knowling.

8 A. Yep, that's more seating area. That was Solon's area.
9 The price list. This is the view when you walk into the shop
10 looking towards the price list. And, again, QB doing the
11 haircut while the client's mother is waiting.

12 Q. The next photograph, please. What is this we're looking
13 at, Mr. Knowling?

14 A. This is the front of the building of the barber shop. The
15 outside.

16 Q. Mr. Knowling, I do not see signage anywhere indicating
17 that this is the location you've described as Gifted Hands.
18 Could you explain why?

19 A. Um, yeah. The guy we pay was gonna put the awning up on
20 the building or whatever, he ended up actually having a heart
21 attack and he passed away.

22 Q. Okay. Thank you, Mr. Knowling. I have no additional
23 questions. I think Mr. Baker may have some for you.

24 THE COURT: All right. Mr. Baker.

25 MR. BAKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BAKER:

Q. Good morning, Mr. Knowling.

A. Good morning.

Q. Mr. Knowling, we've heard the barber business described as a cash business. Were you a cash barber receiving every payment in cash?

A. Yes, and I have a -- I have the cash app also.

Q. So you have like Foursquare on your phone so you can charge?

A. Yes.

Q. Mr. Knowling, it's never polite to ask people what they make, but it is relevant to our trial. Did you make over a hundred thousand dollars a year as a barber when you were working for Solon Tatum?

A. No.

Q. Is it fair to say, Mr. Knowling, that you didn't come close to making a hundred thousand dollars a year?

A. Yeah, I didn't, but he had -- his clientele was larger than everybody. But, no, I was nowhere near a hundred thousand.

Q. Thank you, Mr. Knowling.

MR. BAKER: I have no further questions, Your Honor.

THE COURT: All right. Anything else?

MR. NYAMFUKUDZA: No, Your Honor. Thank you.

1 *THE COURT:* Thank you. You may be excused.

2 *MS. CHARTIER:* Thank you, Your Honor. We would just
3 like to call Agent Giudice to the stand.

4 *THE COURT:* All right. We'll have you sworn again,
5 Agent Giudice. I can't remember if we released you last time
6 or not.

7 ALEXIS GUIDICE

8 *(The oath was administered)*

9 *THE WITNESS:* I do.

10 DIRECT EXAMINATION

11 *BY MS. CHARTIER:*

12 *Q.* Hi, Agent Giudice. I think this will be the last time
13 you're on the stand.

14 So on Friday I don't know if you recall Mr. Baker asking a
15 question of Mr. Tatum about an August 12th phone call in
16 reference to the word "it." Do you remember that?

17 *A.* I don't recall "it," but I recall the testimony about a
18 phone call.

19 *Q.* And I have the line reports here and a transcript of that
20 call if that would refresh your recollection. There was a
21 phone call between Mr. Lee and Mr. Tatum on August 12th at
22 12:05 in which Mr. Tatum asks if "it" has happened.

23 Would you like to see that to refresh your recollection?

24 *A.* Yes, please.

25 *Q.* Did that refresh your recollection?

1 A. Yes, ma'am.

2 Q. And there were other calls I believe you testified to
3 earlier that were deemed nonpertinent, which means they were
4 not recorded, correct?

5 A. Over the duration of the entire wire, that's correct.

6 Q. On August 12th, before that call, there was a telephone
7 call between Mr. Lee and Mr. Tatum deemed nonpertinent that
8 went on for 32 seconds. And I have the line report if you'd
9 like to look at it.

10 A. Yes, please.

11 Q. Did that refresh your recollection?

12 A. Yes, ma'am.

13 Q. Was that an accurate statement that there was a
14 nonpertinent call that day?

15 A. That's correct, it's an outgoing call from Mr. Lee to
16 Solon Tatum that's marked "no audio" and "nonpertinent."

17 Q. And for 32 seconds, correct?

18 A. Correct.

19 Q. Before -- if you look at the time before that 12:05 call,
20 correct?

21 A. That's correct, this call is at 12:01, and the call after
22 is at 12:05 p.m.

23 Q. Thank you. I have no additional questions.

24 THE COURT: All right. Mr. Baker.

25

CROSS-EXAMINATION

BY MR. BAKER:

Q. Agent Giudice, in the course of the wire what does "no audio" mean?

A. It means that there was no communications that went through and no audio was captured.

MR. BAKER: No further questions, Your Honor.

THE COURT: All right. Anything else for Agent Giudice?

REDIRECT EXAMINATION

BY MS. CHARTIER:

Q. No communications doesn't mean the call was not answered, correct, it just means it was not recorded?

A. I didn't run the wire that day, so all I can testify is there was no audio listed for the phone call. You'd have to ask the phone company.

Q. Because if a call wasn't answered, you do write down "call not answered," correct?

A. We would hear the audio of the call ringing and then it not answered. In this particular case there was no audio that transmitted at all.

Q. And again my question may not have been clear. When a call is not answered, you do write "call not answered," correct?

A. Correct. We would -- if the audio was going through, we

1 would hear it and the phone would ring and nobody would answer,
2 so it would list "call not answered."

3 Q. Thank you. I have no additional questions.

4 THE COURT: Any questions?

5 MR. BAKER: No, Your Honor. Thank you.

6 THE COURT: You may be excused back to your seat.

7 And, Ms. Chartier, do you have any other witnesses?

8 MS. CHARTIER: No, we do not at this point. We would
9 rest. Thank you.

10 THE COURT: What that means, Members of the Jury, is
11 we'll re-pick up the list of the defendants and find out if any
12 of the other defendants intend to put on a case or if they
13 simply intend to rest on the presumption of innocence, which
14 is, of course, their right.

15 And the next person in line is Mr. O'Keefe on behalf
16 of Mr. Howard.

17 MR. O'KEEFE: Thank you, Your Honor. We'll rest on
18 the presumption of innocence.

19 THE COURT: Then Ms. Howard for Ms. Atkinson.

20 MS. HOWARD: Thank you, Your Honor. We also rest on
21 the presumption of innocence.

22 THE COURT: All right. Mr. Frawley.

23 MR. FRAWLEY: We rest on the presumption of
24 innocence, Your Honor.

25 THE COURT: And that's for Mr. Avery.

1 And then Mr. Turpel for Ms. Thompson.

2 *MR. TURPEL:* Your Honor, we also rest on the
3 presumption of innocence.

4 *THE COURT:* Mr. Hills on behalf of Mr. Cox.

5 *MR. HILLS:* We would rest, Your Honor.

6 *THE COURT:* Okay. That means we've gone through all
7 the defense, and you've heard the people who are relying and
8 resting on the presumption of innocence and those who chose to
9 put on some proofs. Either option is, of course, entirely
10 within the constitutional rights of the defendants.

11 But the government is the party with the burden of
12 proof here, so they have one last opportunity to put on
13 rebuttal evidence if they wish, so I'll go to Mr. Baker and see
14 if you intend to do that.

15 *MR. BAKER:* We have no rebuttal, Your Honor. We
16 rest.

17 *THE COURT:* Okay. So what that means, Members of the
18 Jury, is that at 9:00 on your second Monday all of the evidence
19 is in. From the day you started to today all of the parties
20 have now presented you with the evidence upon which they are
21 going to rely to make their arguments. In the case of the
22 government that the government has proven beyond a reasonable
23 doubt what it's charged these defendants with, and in the case
24 of the defendants that the government hasn't been able to do
25 that.

1 Before we hear the arguments of the parties, I'm
2 going to give you some instructions on the law. And before we
3 do that, I'm going to make sure that I have a script that the
4 parties are aware of so they know what I'm going to say.
5 We've, of course, worked on this before, but I want to take
6 time to make sure that the final script is the way it ought to
7 be.

8 So we'll take a break now, come back at about 9:30.
9 We'll take a 30-minute break. And then when you come in, I'll
10 give you some instructions, and after I'm done reading those
11 instructions, I'll turn it over to the lawyers to start the
12 arguments. The government will start and finish the arguments,
13 and the defendants will each have an opportunity in the order
14 that you've become accustomed to. And we'll take breaks as we
15 need to along the way.

16 So be ready when you do come back in to go at least
17 an hour and a half to two hours. That's what my hope is, that
18 we can go that long before we have to take another break. And
19 then we'll pick up with whatever order we're in at that time.
20 So you get an early break, and we'll come back and get you
21 about 9:30.

22 *(Jury exited the courtroom at 9:09 a.m.)*

23 **THE COURT:** All right. Before we go to instructions,
24 is there anything else on behalf of the parties?

25 **MS. CHARTIER:** If I may, Your Honor, I would just

1 like to renew my Rule 29 motion. I will just incorporate all
2 the arguments previously made, and I'm assuming the Court will
3 reiterate its ruling.

4 *THE COURT:* And I take it all the defendants would
5 want to renew their Rule 29 motion at this point?

6 *MR. O'KEEFE:* Yes, Your Honor.

7 *MR. LOMBARD:* Yes.

8 *MS. HOWARD:* That's correct, Your Honor.

9 *THE COURT:* Ms. Howard.

10 *MS. HOWARD:* Your Honor, I would also object to
11 excluding an instruction on buying and selling not being enough
12 to make a conspiracy.

13 *THE COURT:* We'll get to instructions in just a
14 second.

15 On the Rule 29s I'm going to consider that each of
16 the defendants have renewed that, and I'm going to make the
17 same ruling I did at the end of the first case with Count 4
18 excepted since I did dismiss that.

19 And then is there anything else before we go to
20 instructions? (No response). Okay.

21 Hopefully you got some iterations over the weekend,
22 and then you probably haven't seen the most recent iteration
23 until the package this morning which incorporates some changes
24 to the 14.07 instruction, unanimity required, to reflect a move
25 from my initial plan on the verdict form, one verdict form for

1 everybody, to the plan that the parties agreed on over the
2 weekend to a separate verdict form for each defendant. I
3 thought that made sense to me. I think actually when I look
4 through it, although it's a bigger bulk for the jury, it's
5 probably clearer. But I did need to make some changes in my
6 judgment to 14.07 to avoid confusing the jury, at least in my
7 mind, by going back to something like the form I had.

8 I think the other changes were pretty minor. I did
9 add back language that I think Mr. Baker initially took out in
10 the deliberation instruction on asking for exhibits, because
11 although I do intend to put the paper and electronic exhibits
12 back in the jury room, in theory they might want to see the
13 drug exhibits or some of the others, and I'm not sending those
14 back.

15 So let me just go to each party and see if there's
16 anything else that you need to put on the record or clarify or
17 object to regarding the instructions.

18 From the government, first of all.

19 *MR. BAKER:* Your Honor, the government's only other
20 statement about the proposed instruction sent out this weekend
21 was that there was the clause of 7.20, a statement by
22 defendant. I don't believe there was any evidence of any of
23 the defendants' statements in a post-arrest scenario, which was
24 the only reason we raised it.

25 *THE COURT:* All right. And I did take that out of

1 the set you got this morning.

2 MR. BAKER: Thank you, Your Honor.

3 THE COURT: Mr. Lombard.

4 MR. LOMBARD: Nothing else, Your Honor.

5 THE COURT: Mr. Phelan.

6 MR. PHELAN: I'd just renew on truthfulness,
7 Your Honor.

8 THE COURT: Okay.

9 MR. PHELAN: Even though the Plea Agreement -- no
10 Plea Agreement was admitted, it still talked about what your
11 obligation is on whether to testify and the coconspirators were
12 saying they were truthful, so I would just renew my argument
13 there.

14 The other -- may I have a moment, Your Honor?
15 Nothing else, Your Honor. Thank you.

16 THE COURT: All right. So I'll make the same ruling
17 on the truthfulness instruction that I did earlier, believing
18 that it's adequately covered by the existing instruction set.

19 And go to Ms. Chartier.

20 MS. CHARTIER: No other objections. Thank you,
21 Your Honor.

22 THE COURT: All right. Mr. O'Keefe.

23 MR. O'KEEFE: No objections, Your Honor.

24 THE COURT: And Ms. Howard.

25 MS. HOWARD: Thank you, Your Honor. We object to the

1 exclusion from the conspiracy instruction a separate
2 instruction that a mere buy/sell is not enough to find a
3 conspiracy. We think it's called for under these proofs, and
4 we would state this objection for the record, Your Honor.

5 *THE COURT:* All right. Just so I'm clear, you were
6 relying on the commentary to the conspiracy instruction?

7 *MS. HOWARD:* That's correct, Your Honor.

8 *THE COURT:* Okay. So let me just amplify briefly why
9 I'm not going to give the instruction. I'm not excluding
10 anything from the standard instruction on conspiracy. I'm
11 giving the standard instruction in its entirety, so that's the
12 first thing.

13 The second question is is this an appropriate case to
14 amplify that instruction in some way, pulling in particular out
15 of the commentary the reference to the general statement that
16 ordinarily a simple buyer/seller relationship or sale wouldn't
17 be enough to establish a conspiracy. I think I've only used
18 that once. I mentioned it earlier. I went back to look at
19 that over the weekend. It was a unique situation in my
20 judgment where the government charged only -- a conspiracy
21 against only one person, did not charge the underlying
22 transactional counts that it could have because the statute of
23 limitations had expired on those. That, among other things, I
24 think made it a unique case for the instruction, and I felt
25 like it was important to amplify for the jury the difference

1 between the substantive offense and a conspiracy offense. And
2 here I don't think the same situation applies, and I think the
3 ordinary instruction on conspiracy is adequate, ample, and
4 allows both sides to make their arguments on that point,
5 including Ms. Howard to make her argument on behalf of
6 Ms. Atkinson. So I'm not going to include it for those
7 reasons.

8 Ms. Howard.

9 MS. HOWARD: I'll just rest on my objection for the
10 record, Your Honor.

11 THE COURT: Okay. Mr. Frawley.

12 MR. FRAWLEY: Your Honor, may I see Mr. Baker for a
13 moment before?

14 THE COURT: Sure. I just found out from Mr. Schmidt
15 that you didn't get the set that I was talking about this
16 morning. I'm sorry about that.

17 MR. FRAWLEY: That was going to be my question. I'll
18 wait to see that, Your Honor.

19 THE COURT: Mr. Turpel, do you have anything?

20 MR. TURPEL: No objection.

21 THE COURT: And once Mr. Frawley and Mr. Hills have a
22 chance to see that.

23 All right. Mr. Frawley, anything from your
24 perspective?

25 MR. FRAWLEY: Nothing. That clears it up.

1 *THE COURT:* Thank you.

2 And Mr. Hills.

3 *MR. HILLS:* No objection.

4 *THE COURT:* Okay. I think, then, we've covered
5 everyone, then. The only other item I had was the exhibit list
6 which I think the parties had agreed on, and I had a couple of
7 discrepancies from my notes, but we cleared that up, so I think
8 everybody is on the same page with respect to that too. And
9 then we'd have the addition of Defense 7A through E this
10 morning.

11 Are there any other things from the parties'
12 perspective? Go ahead, Mr. Baker.

13 *MR. BAKER:* Your Honor, on the issue of the exhibit
14 list, the Court discussed with the parties the importance of
15 going over the exhibits. I handed the defense counsel an index
16 of what we have on the thumb drive we discussed with the Court.
17 And I also mentioned to them we had a hard time with a couple
18 files earlier this weekend getting them on there. Those files
19 have been added, so the index that the defense has right now
20 should also have Exhibits 95 and 105 added to it in terms of
21 our thumb drive.

22 *THE COURT:* All right.

23 *MR. BAKER:* Those were admitted by the Court. And
24 then in terms of the individual still pictures or the pictures
25 in the course of the evidence, those are all available in our

1 final binder which has been culled of all the information that
2 was extraneous.

3 *THE COURT:* All right. Okay. Anything else before
4 we take a break and then everybody can get ready for an hour
5 and a half to two hours?

6 *MS. CHARTIER:* The only thing on the exhibits is we
7 have Mr. -- I don't know if Mr. Castro's phone call made its
8 way onto the government's. We have it on our thumb drive.
9 They were having difficulty with our video. It was too big for
10 making its way through. So we have thumb drives with that
11 phone call and our video, and then we have copies of all the
12 defense exhibits from Mr. Tatum. But if the other lawyers have
13 theirs, we can put them in our little packet.

14 *THE COURT:* All right. Okay.

15 *MR. BAKER:* One other issue, Your Honor --

16 *THE COURT:* Yes.

17 *MR. BAKER:* -- Ms. Chartier was kind enough to raise.
18 There was a placard she intends to use during closing. It has
19 some descriptions and an escalated table on burdens of proof
20 and whether things fall into not guilty. She raised it with me
21 to see if I had any objection. I do object to it because the
22 Court instructs on reasonable doubt, and I don't think it's
23 appropriate for closing argument.

24 *MS. CHARTIER:* Ms. Thelen is holding it. I believe
25 Ms. Howard and I both might like to use it. Ms. Thelen, who

1 I've been calling Ms. Carey all morning, is holding it for the
2 Court's review so the Court can give it a thumbs up or thumbs
3 down.

4 *THE COURT:* All right. Well, I'll think about it.
5 If you do use it, Mr. Baker can object. And what I'll tell the
6 jury is, statements that the lawyers make, arguments the
7 lawyers make about what the law means doesn't control. And
8 what they have to do is decide what they think reasonable doubt
9 means in the context of my instructions which will tell them
10 something they wouldn't hesitate to rely on in making the most
11 important decisions in their own lives. So I will say that. I
12 won't -- I definitely won't let you use it without that
13 clarifying instruction. I'll think about whether to allow it
14 at all.

15 *MS. CHARTIER:* I'll make it -- that would disrupt my
16 flow, Your Honor, so I probably will not use it. Thank you,
17 Your Honor.

18 *THE COURT:* Okay. All right. Very good.

19 *MR. BAKER:* Thank you, Your Honor.

20 *THE COURT:* We'll come back at 9:30.

21 *THE CLERK:* Court is in recess.

22 *(Recess taken at 9:20 a.m.)*

23 *(Jury entered the courtroom at 9:40 a.m.)*

24 *THE COURT:* Members of the Jury, this is going to be
25 a set of instructions from me to you on the law that you have

1 to apply in the case. I'd rather just talk to you about it
2 informally, but we do it in a written format so that there's a
3 script and everybody knows what's coming and so that we can be
4 sure to get it right. I will give you a copy of this in the
5 jury room so that you'll have it for your deliberations if you
6 need to refer back to it. But I want to read it to you here.
7 We will project it up there so that you can see it as we're
8 going along for those of you who like that. And once I'm done
9 with it, we'll go right into the argument of the lawyers.

10 So Members of the Jury, I will now instruct you on
11 the law you must follow in deciding this case. I will start by
12 explaining your duties and the general rules that apply in
13 every criminal case, and then I will explain the elements or
14 parts of the crimes that the defendants are accused of
15 committing, then I will explain some rules that you must use in
16 evaluating particular testimony and evidence. Finally I will
17 explain the rules that you must follow during your
18 deliberations and the possible verdicts that you may return.
19 Please listen very carefully to these instructions. I will
20 also give you a written copy of these instructions when you
21 retire to your jury room to deliberate, and I will be
22 projecting a copy of these instructions on the courtroom screen
23 for those who like to follow along as I read.

24 You have two main responsibilities as jurors. The
25 first one is to decide what the facts are based on the evidence

1 that you saw and heard. Deciding what the facts are is your
2 job, not mine, and nothing that I have said or done during this
3 trial was meant to influence your decision about the facts in
4 any way.

5 Your second responsibility is to take the law that I
6 give you, apply it to the facts, and decide if the government
7 has proven its case beyond a reasonable doubt. It is my role
8 to instruct you concerning the law, and you are bound by the
9 oath that you took at the beginning of the trial to follow the
10 instructions that I give you, even if you personally disagree
11 with them. This also includes the instructions that I gave you
12 before and during the trial. All the instructions are
13 important, and you should consider them together as a whole.

14 The lawyers may talk about the law during their
15 arguments, but if what they say is different from what I
16 indicate in these instructions, you must follow what I say.
17 You must perform these duties fairly, not letting any bias,
18 sympathy, or prejudice that you may feel toward one side or the
19 other influence your decision.

20 The defendants have pleaded not guilty to the crimes
21 charged in the Second Superseding Indictment. The Second
22 Superseding Indictment is not any evidence of guilt. It is the
23 formal document that the government files with this court
24 telling the defendants what crimes they are accused of
25 committing. It does not even raise any suspicion of guilt.

1 The defendants start the trial with no evidence at
2 all against them, and the law presumes that they are innocent.
3 This presumption of innocence stays with them unless the
4 government presents evidence before you in court that overcomes
5 that presumption and convinces you beyond a reasonable doubt
6 that one or more of them are guilty. This means that the
7 defendants have no obligation to present any evidence at all or
8 to prove to you in any way that they are innocent. It is the
9 government's responsibility to prove a defendant guilty, and
10 this burden stays on the government from start to finish.
11 Unless the government convinces you beyond a reasonable doubt
12 that the defendants are guilty, you must find the defendants
13 not guilty.

14 The government must prove every element of each crime
15 charged beyond a reasonable doubt. Proof beyond a reasonable
16 doubt does not mean proof beyond all possible doubt. Possible
17 doubts or doubts based purely on speculation are not reasonable
18 doubts. A reasonable doubt is what its name implies: A doubt
19 based on reason and common sense. It may arise from the
20 evidence, the lack of evidence, or the nature of the evidence.
21 Proof beyond a reasonable doubt means proof which is so
22 convincing that you would not hesitate to rely and act on it in
23 making the most important decisions in your own lives. If you
24 are convinced that the government has proved the defendants
25 guilty beyond a reasonable doubt, say so by returning a guilty

1 verdict. If you are not convinced, say so by returning a
2 not-guilty verdict.

3 You must make your decision based only on the
4 evidence that you saw and heard here in court. Do not let
5 rumors, suspicions, or anything that you may have seen or heard
6 outside of court influence your decision in any way. The
7 evidence in this case includes only what the witnesses said
8 while they were testifying under oath, the exhibits that were
9 admitted into evidence, and the stipulations that the lawyers
10 agreed to. Nothing else is evidence. The lawyers' statements
11 and arguments are not evidence. Their questions and objections
12 are not evidence. My legal rulings are not evidence. So
13 during the trial if I sustain an objection and did not let you
14 hear the answers to some of the questions that the lawyers
15 asked, or if I ruled that you could not see some of the
16 exhibits offered by the lawyers, or if I struck something from
17 the record and ordered you to disregard it, then you must
18 completely ignore all of these things in your deliberations.
19 Do not speculate about what a witness might have said or what
20 an exhibit might have shown. Rely only on the actual evidence
21 admitted in the case.

22 You should use your common sense in weighing the
23 evidence. Consider it in light of your everyday experience
24 with people and events and give it whatever weight you believe
25 it deserves. If your experience tells you that certain

1 evidence reasonably leads to a conclusion, you are free to
2 reach that conclusion.

3 Now, some of you may have heard the terms "direct
4 evidence" and "circumstantial evidence." Direct evidence is
5 simply evidence, like the testimony of an eyewitness, which if
6 you believe it, directly proves a fact. If a witness testified
7 that he saw it raining outside and you believed him, that would
8 be direct evidence that it was raining. Circumstantial
9 evidence is simply a chain of circumstances that indirectly
10 proves a fact. If someone walked into the courtroom wearing a
11 raincoat covered with drops of water and carrying a wet
12 umbrella, that would be circumstantial evidence from which you
13 could conclude that it was raining. It is your job to decide
14 how much weight to give the direct and circumstantial evidence.
15 The law makes no distinction between the weight that you should
16 give to either one or say that one is any better evidence than
17 the other. You should consider all the evidence, both direct
18 and circumstantial, and give it whatever weight you believe it
19 deserves.

20 Another part of your responsibility as jurors is to
21 decide how believable each witness was. It is for you alone to
22 decide if a witness's testimony was believable and how much
23 weight you think it deserves. You are free to believe
24 everything that a witness said or only part of it or none of it
25 at all. But you should act reasonably and carefully in making

1 these decisions.

2 Let me suggest some factors for you to consider in
3 evaluating each witness's testimony. Ask yourself if the
4 witness was able to clearly see or hear the events. Sometimes
5 even an honest witness may not have been able to see or hear
6 what was happening and may make a mistake. Ask yourself how
7 good the witness's memory seemed to be. Did the witness seem
8 able to accurately remember what happened? Ask yourself if
9 there was anything else that may have interfered with a
10 witness's ability to perceive or remember the events. Ask
11 yourself how the witness acted while testifying. Did the
12 witness appear honest or did the witness appear to be lying?
13 Ask yourself if the witness had any relationship to the
14 government or the defendant or anything to gain or lose from
15 the case that might influence the witness's testimony. Ask
16 yourself if the witness had any bias or prejudice or reason for
17 testifying that might cause the witness to lie or to slant the
18 testimony in favor of one side or the other. Ask yourself if
19 the witness testified inconsistently while on the witness stand
20 or if the witness said or did something or failed to say or do
21 something at any other time that is inconsistent with what the
22 witness said while testifying. If you believe that the witness
23 was inconsistent, ask yourself if this makes the witness's
24 testimony less believable. Sometimes it may. Other times it
25 may not. Consider whether the inconsistency was about

1 something important or about some unimportant detail. Ask
2 yourself if it seemed like an innocent mistake or if it seemed
3 deliberate. And ask yourself how believable the witness's
4 testimony was in light of all the other evidence. Was the
5 witness's testimony supported or contradicted by other evidence
6 that you found believable? If you believe that a witness's
7 testimony was contradicted by other evidence, remember that
8 people sometimes forget things and that even two honest people
9 who witness the same event may not describe it exactly the same
10 way.

11 You may also consider the age, experience, and
12 maturity of a witness in evaluating their believability. These
13 are only some of the ideas that you may consider in deciding
14 how believable each witness was. You may also consider other
15 things that you think shed some light on the witness's
16 believability. Use your common sense and your everyday
17 experience in dealing with other people and then decide what
18 testimony you believe and how much weight you think it
19 deserves.

20 You are not to make any decisions based only on the
21 number of witnesses who testified for a particular side. What
22 is more important is how believable the witnesses were and how
23 much weight you think their testimony deserves.

24 The lawyers for both sides objected to some of the
25 things that were said or done during the trial. They have a

1 duty to object whenever they think that something is not
2 permitted by the Rules of Evidence. Therefore, you should not
3 concern yourselves with these objections. Please do not
4 interpret my rulings on the lawyers' objections as any
5 indication of how I think the case should be decided. My
6 rulings were based on the Rules of Evidence, not on any opinion
7 about the case. Remember that your decision must be based only
8 on the evidence that you saw and heard here in court.

9 Both the objections of the lawyers and my rulings on
10 them are designed to ensure that the parties receive a fair
11 trial under the law. They should not influence your decision.

12 That concludes the part of my instructions explaining
13 your duties and the general rules that apply in every criminal
14 case. In a moment I will explain the elements of the crime or
15 crimes that each defendant is accused of committing.

16 The defendants are on trial here only for the
17 particular crimes charged in the Second Superseding Indictment.
18 Also keep in mind that whether anyone else should be prosecuted
19 and convicted for these crimes is not a proper matter for you
20 to consider. The possible guilt of others is no defense to a
21 criminal charge. Your job is to decide if the government has
22 proved each defendant in this case guilty. Do not let the
23 possible guilt of others influence your decision in any way.

24 The defendants have all been charged with a crime of
25 conspiracy to distribute controlled substances including

1 heroin, cocaine, and marijuana. Several defendants have also
2 been charged with possession with intent to distribute a
3 controlled substance. The number of charges is no evidence of
4 guilt and this should not influence your decision in any way.
5 And in our system of justice, guilt or innocence is personal
6 and individual. It is your duty to separately consider the
7 evidence that relates to each defendant on each charge and to
8 return a separate verdict for each one of them. For each one
9 you must decide whether the government has presented proof
10 beyond a reasonable doubt that a particular defendant is guilty
11 of a particular charge. Your decision on any one defendant or
12 charge, whether it is guilty or not guilty, should not
13 influence your decision on any of the other defendants or
14 charges.

15 Next I want to say a word about the dates mentioned
16 in the Second Superseding Indictment. The Second
17 Superseding Indictment charges that crimes happened on or about
18 a certain date. The government does not have to prove that a
19 crime happened on that exact date, but the government must
20 prove that a crime happened reasonably close to that date.

21 Next I want to explain something about proving a
22 defendant's state of mind. Ordinarily there is no way that a
23 defendant's state of mind can be proven directly because no one
24 can read another person's mind and tell what that person is
25 thinking. But a defendant's state of mind can be proved

1 indirectly from the surrounding circumstances. This includes
2 things like what the defendant said, what the defendant did,
3 how the defendant acted, and any other facts or circumstances
4 in evidence that show what was in the defendant's mind. You
5 may also consider the natural and probable results of any acts
6 that a defendant knowingly did or did not do and whether it is
7 reasonable to conclude that the defendant intended those
8 results. This, of course, is all for you to decide.

9 Now, some of the people who may have been involved in
10 these events are not on trial. This does not matter. There is
11 no requirement that all members of a conspiracy be charged and
12 prosecuted or tried together in one proceeding. Nor is there
13 any requirement that the names of the other conspirators be
14 known. An indictment can charge a defendant with a conspiracy
15 involving people whose names are not known as long as the
16 government can prove that the defendant conspired with one or
17 more of them. Whether they are named or not does not matter.

18 Count 1 of the Second Superseding Indictment charges
19 each one of the defendants with conspiracy to distribute and
20 possess with the intent to distribute controlled substances,
21 including heroin, cocaine, and marijuana, from in or about 2013
22 through and including September 3, 2017. It is a crime for two
23 or more persons to conspire or agree to commit a drug crime
24 even if they never actually achieve their goal.

25 A conspiracy is a kind of criminal partnership. For

1 you to find any one of the defendants guilty of the conspiracy
2 charge, the government must prove each and every one of the
3 following elements beyond a reasonable doubt: First, that two
4 or more people or persons conspired or agreed to distribute or
5 possess with the intent to distribute controlled substances.
6 Second, that the defendants knowingly and voluntarily joined
7 the conspiracy.

8 Now I will give you more detailed instructions on
9 some of these terms. With regard to the first element of
10 criminal agreement, the government must prove that two or more
11 persons conspired or agreed to cooperate with each other to
12 distribute or possess with the intent to distribute controlled
13 substances. This does not require proof of any formal
14 agreement, written or spoken, nor does this require proof that
15 everyone involved agreed on all the details. But proof that
16 people simply met together from time to time and talked about
17 common interests or engaged in similar conduct is not enough to
18 establish a criminal agreement. These are things that you may
19 consider in deciding whether the government has proved an
20 agreement, but without more, they are not enough.

21 What the government must prove is that there was a
22 mutual understanding, either spoken or unspoken, between two or
23 more people to cooperate with each other to distribute or
24 possess with the intent to distribute controlled substances.
25 This is essential.

1 An agreement can be proved indirectly by facts and
2 circumstances which lead to a conclusion that an agreement
3 existed, but it is up to the government to convince you that
4 such facts and circumstances existed in this particular case.

5 One more point about the agreement. The Second
6 Superseding Indictment accuses the defendants of conspiring to
7 distribute and possess with the intent to distribute several
8 different controlled substances. The government does not have
9 to prove that the defendants each agreed to distribute or
10 possess with the intent to distribute all of the different
11 controlled substances. But the government must prove an
12 agreement to distribute or possess with the intent to
13 distribute at least one of the controlled substances for you to
14 return a guilty verdict on the conspiracy charge.

15 With regard to the second element, the defendants'
16 connection to the conspiracy, the government must prove that
17 the defendants knowingly and voluntarily joined that agreement.
18 The government must prove that the defendants knew the
19 conspiracy's main purpose and voluntarily joined the conspiracy
20 intending to help advance or achieve its goals. You must
21 consider each defendant separately in this regard.

22 This does not require proof that a defendant knew
23 everything about the conspiracy or everyone else involved or
24 that the defendant was a member of it from the very beginning.
25 Nor does it require proof that a defendant played a major role

1 in the conspiracy or that the defendant's connection to it was
2 substantial. A slight role or connection may be enough.

3 Further, this does not require proof that a defendant
4 knew the drug involved was marijuana, cocaine, or heroin. It
5 is enough that the defendant knew it was some kind of
6 controlled substance. Nor does this require proof that a
7 defendant knew how much marijuana, cocaine, or heroin was
8 involved. It is enough that the defendant knew that some
9 quantity was involved.

10 But proof that a defendant simply knew about a
11 conspiracy or was present at times or associated with members
12 of the group is not enough, even if the defendant approved of
13 what was happening or did not object to it.

14 Similarly, just because a defendant may have done
15 something that happened to help a conspiracy does not
16 necessarily make the defendant a conspirator. These are all
17 things that you may consider in deciding whether the government
18 has proved that a defendant joined a conspiracy, but without
19 more, they are not enough.

20 A defendant's knowledge can be proved indirectly by
21 facts and circumstances which lead to a conclusion that the
22 defendant knew the conspiracy's main purpose, but it is up to
23 the government to convince you that such facts and
24 circumstances existed in this particular case.

25 You must be convinced that the government has proved

1 all of these elements beyond a reasonable doubt in order for
2 you to find any one of these defendants guilty of the
3 conspiracy charge.

4 Several of the defendants are charged with the crime
5 of possession of heroin or cocaine with the intent to
6 distribute. I have summarized the charges against these
7 defendants in the table below. And you can see Counts 2, 3, 5,
8 10, 11, 12, and 14 each pertain to a particular defendant on or
9 about a particular date involving a particular controlled
10 substance. I won't read the whole table to you because you'll
11 have it with you.

12 Heroin and cocaine are controlled substances. For
13 you to find the defendants guilty of these crimes as charged,
14 you must find that the government has proved each and every one
15 of the following elements beyond a reasonable doubt: First,
16 the defendant knowingly or intentionally possessed heroin,
17 cocaine, or both as charged. Second, the defendant intended to
18 distribute heroin, cocaine, or both as charged.

19 Now I will give you more detailed instructions on
20 some of these terms. To prove that a defendant knowingly
21 possessed a controlled substance, the defendant did not have to
22 know that the substance was heroin or cocaine. It is enough
23 that the defendant knew or had reason to believe that it was
24 some kind of controlled substance. Further, the defendant did
25 not have to know how much heroin or cocaine he or she

1 possessed. It is enough that the defendant knew that he or she
2 possessed some quantity of the heroin or cocaine.

3 The phrase "intended to distribute" means the
4 defendant intended to deliver or transfer a controlled
5 substance sometime in the future. To distribute a controlled
6 substance there need not be an exchange of money.

7 In determining whether a defendant had the intent to
8 distribute, you may consider all the facts and circumstances
9 shown by the evidence, including the defendant's words and
10 actions. Intent to distribute can be inferred from the
11 possession of a large quantity of drugs, too large for personal
12 use alone. You may also consider the estimated street value of
13 the drugs, the purity of the drugs, the manner in which the
14 drugs were packaged, the presence or absence of a large amount
15 of cash, the presence or absence of weapons, and the presence
16 or absence of equipment used for the sale of drugs. The law
17 does not require you to draw such an inference, but you may
18 draw it.

19 If you are convinced that the government has proved
20 all of these elements for an individual defendant so charged,
21 say so by returning a guilty verdict on the charge. If you
22 have a reasonable doubt about any one of these elements for a
23 defendant on a charge, then you must find that defendant not
24 guilty of that charge.

25 Next I want to explain something about possession.

1 The government does not necessarily have to prove that a
2 defendant physically possessed a controlled substance for you
3 to find the defendant guilty of the crime of possession with
4 the intent to distribute a controlled substance. The law
5 recognizes two kinds of possession: Actual possession and
6 constructive possession. Either one of these, if proved by the
7 government, is enough to convict.

8 To establish actual possession the government must
9 prove that a defendant had direct physical control over the
10 controlled substance and knew that he or she had control of it.
11 To establish constructive possession the government must prove
12 that a defendant had the right to exercise physical control
13 over the controlled substance and knew that he or she had this
14 right and that the defendant intended to exercise physical
15 control over the controlled substance at some time, either
16 directly or through other persons.

17 For example, if you left something with a friend
18 intending to come back later and pick it up, you would have
19 constructive possession of it while it was in the actual
20 possession of your friend. But understand that just being
21 present where something is located does not equal possession.
22 The government must prove that a defendant had actual or
23 constructive possession of the controlled substance and knew
24 that he or she did for you to find a defendant guilty of this
25 crime. This, of course, is all for you to decide.

1 One more thing about possession. The government does
2 not have to prove that each defendant was the only one who had
3 possession of a controlled substance. Two or more people can
4 together share actual or constructive possession over property,
5 and if they do, both are considered to have possession as far
6 as the law is concerned. But remember that just being present
7 with others who had possession is not enough to convict. The
8 government must prove that each defendant had either actual or
9 constructive possession of the controlled substance and knew
10 that he or she did for you to find the defendant guilty of this
11 crime. This, again, is all for you to decide.

12 For some defendants and charges you may also be asked
13 to determine the type and quantity of the controlled substance
14 or substances involved in the offense. The verdict forms I
15 have prepared for you will include special questions for you to
16 answer in these situations.

17 If you find by unanimous agreement that the
18 government has proved beyond a reasonable doubt that a
19 defendant is guilty of one or more of the counts with special
20 questions, you will also need to answer the questions about the
21 type and quantities that you find were involved in the offense
22 or offenses. In each instance you will have ranges of
23 quantities to consider for any controlled substance you find
24 beyond a reasonable doubt was involved. In each instance the
25 verdict form will specify a drug type or types and a quantity

1 range or ranges. For each type of drug you find beyond a
2 reasonable doubt was involved in the offense, select the
3 quantity that you find the government has proved beyond a
4 reasonable doubt.

5 In determining the quantity of the controlled
6 substance involved in the offense, you need not find that the
7 defendant knew the quantity involved in the offense. However,
8 in determining the quantity for each defendant, you must
9 include only the quantity you find involved from that
10 defendant's own conduct and the conduct of other coconspirators
11 that was reasonably foreseeable to that defendant. That
12 quantity could be less than the quantity involved in the
13 conspiracy as a whole.

14 I will provide you with special verdict forms to help
15 you focus on the decisions you will need to make.

16 That concludes the part of my instructions explaining
17 the elements of the crimes. Next I will explain some rules
18 that you must use in considering some of the testimony and
19 evidence.

20 You've heard that search warrants were executed at
21 various locations which are alleged to have been associated
22 with this conspiracy, that arrest warrants were executed
23 against a number of people alleged to have been associated with
24 this conspiracy, and that wire intercepts were authorized for
25 phone numbers associated with some persons alleged to have been

1 involved in this conspiracy. Search warrants, arrest warrants,
2 and wire intercepts are proper investigative and law
3 enforcement tools used by the government, but the fact that
4 these tools were used does not indicate one way or the other
5 whether a defendant is guilty or not guilty of the charges
6 contained within this Second Superseding Indictment. You
7 should not consider it in your deliberations.

8 You've heard that defendants Castro, Nelson, Howard,
9 Atkinson, Avery, Thompson, and Cox have chosen not to testify
10 and that defendants Nelson, Howard, Atkinson, Avery, Thompson,
11 and Cox have also chosen not to present any evidence. A
12 defendant has an absolute right not to testify or present
13 evidence. The fact that a defendant did not testify or present
14 evidence cannot be considered by you in any way. Do not even
15 discuss it in your deliberations. Remember that it is up to
16 the government to prove each defendant guilty beyond a
17 reasonable doubt. It is not up to any of the defendants to
18 prove that he or she is innocent.

19 You have heard Defendant Tatum testify. Earlier I
20 talked to you about the credibility or the believability of the
21 witnesses, and I suggested some factors for you to consider in
22 evaluating each witness's testimony. You should consider those
23 same factors in evaluating Defendant Tatum's testimony.

24 You have heard the testimony of Thomas Burns and
25 Luke Augustine who testified as opinion witnesses. You do not

1 have to accept Mr. Burns' or Mr. Augustine's opinions. In
2 deciding how much weight to give these opinions, you should
3 consider the witness's qualifications and how they reached
4 their conclusions. Also consider the other factors discussed
5 in these instructions for weighing the credibility of
6 witnesses. Remember that you alone decide how much of a
7 witness's testimony to believe and how much weight it deserves.

8 You have heard the testimony of some witnesses who
9 may have made statements before this trial that differ from
10 their testimony here in court. Any such earlier statements
11 were brought to your attention only to help you decide how
12 believable the witness's testimony in court was. You cannot
13 use it as proof of anything else. You can only use it as one
14 way of evaluating the testimony here in court.

15 You have heard the testimony of witnesses who were
16 convicted of a crime before this trial. The earlier conviction
17 or convictions were brought to your attention only as one way
18 of helping you decide how believable the testimony was. Do not
19 use the evidence for any other purpose. It is not evidence of
20 anything else.

21 You have heard the testimony of one or more witnesses
22 who said they were also using illegal drugs or abusing alcohol
23 during the time that the witnesses testified about. You should
24 consider such a witness's testimony with more caution than the
25 testimony of other witnesses. An addict may have a constant

1 need for drugs and for money to buy drugs. He may also have a
2 greater fear of imprisonment because the supply of drugs may be
3 cut off. Do not convict a defendant based on the unsupported
4 testimony of such a witness standing alone unless you believe
5 the testimony beyond a reasonable doubt.

6 You have heard the testimony of Yusef Phillips,
7 Toranita Meridy, Etrevion Murphy, Ray Lee, Tony Kirkland,
8 Derrick Swain, and Salvador Cervantes. You have also heard
9 that these witnesses received or the government has promised
10 them that they may receive a benefit in the form of a lessened
11 sentence in exchange for their cooperation. It is permissible
12 for the government to make such a promise, but you should
13 consider these witnesses' testimony with more caution than the
14 testimony of other witnesses. Consider whether the testimony
15 may have been influenced by the government's promise. Do not
16 convict a defendant based on the unsupported testimony of such
17 witnesses standing alone unless you believe their testimony
18 beyond a reasonable doubt.

19 You've heard the testimony of several witnesses who
20 say they were involved in the same crime that the defendants
21 are charged with committing. You should consider the testimony
22 of these witnesses with more caution than the testimony of
23 other witnesses. Do not convict the defendants based on the
24 unsupported testimony of such witnesses standing alone unless
25 you believe their testimony beyond a reasonable doubt. The

1 fact that many of these witnesses have pleaded guilty to a
2 crime is not evidence that any of these defendants are guilty,
3 and you cannot consider this against the defendants here in any
4 way.

5 During the trial you have seen counsel use summaries,
6 charts, or similar materials which were offered to assist in
7 the presentation and understanding of the evidence. These
8 materials are not themselves evidence and must not be
9 considered as proof of any facts.

10 You have heard the testimony that one or more of the
11 defendants committed crimes, acts, or wrongs other than the
12 ones charged in the Second Superseding Indictment. If you find
13 a defendant did those crimes, acts, or wrongs, you can consider
14 the evidence only as it relates to the government's claim on
15 the defendant's intent or plan or on the credibility of a
16 testifying defendant. You must not consider it for any other
17 purpose.

18 Remember that each defendant is on trial here only
19 for the crimes charged in the Second Superseding Indictment and
20 not for the other acts. Do not return a guilty verdict unless
21 the government proves the crimes charged in the Second
22 Superseding Indictment beyond a reasonable doubt.

23 You have heard some tape recordings that were
24 received in evidence and you were given some written
25 transcripts of these tapes on the screens. Keep in mind that

1 the transcripts are not evidence. They were given to you only
2 as a guide to help you follow what was being said. The tapes
3 themselves are the evidence. If you noticed any differences
4 between what you heard on the tapes and what you read in the
5 transcripts, you must rely on what you heard, not what you
6 read. And if you could not hear or understand certain parts of
7 the tapes, you must ignore the transcripts as far as those
8 parts are concerned.

9 That takes us to a point where I'm going to stop the
10 instructions and turn it over to the lawyers for their
11 argument. And when they are all done, I'll have a few more
12 instructions for you about deliberations, and I'll show you the
13 verdict forms, or at least samples of the verdict forms, so you
14 know what to expect when you get in the jury room. But for now
15 I want to turn it over to the lawyers.

16 And as you know, the government has the burden of
17 proof, and so they have the privilege of opening this argument
18 and closing it at the end of all the arguments.

19 So Mr. Fauson, Mr. Baker, whoever is arguing, we'll
20 turn it over to you.

21 *MR. FAUSON:* Thank you, Your Honor.

22 Members of the Jury, you can see from this case that
23 drug dealing is always about the money. People don't get
24 involved in dealing drugs because it's fun.

25 As you saw from the testimony and evidence in this

1 case, drug dealers frequently speak in code because they are
2 worried about getting caught.

3 The law prohibits the use, the possession, and the
4 possession with intent to distribute cocaine, heroin, and
5 marijuana under federal law. These are deemed controlled
6 substances, and because they are controlled substances and
7 because they are substances of abuse and have potential for
8 addiction, they make a lot of money when they are illegally
9 sold, and that's why we're here.

10 *THE COURT:* Can you make sure that microphone is
11 pointed to you as close as possible. Thank you.

12 *MR. FAUSON:* Thank you, Your Honor.

13 This was a chain conspiracy, ladies and gentlemen.
14 It started -- do we not have -- I think we need --

15 *THE COURT:* Do you have it on lecturn or through
16 your -- you have to have it on the lecturn.

17 *MR. FAUSON:* Yeah, we have it through the lecturn,
18 Your Honor. Sorry.

19 *THE COURT:* All right.

20 *MR. FAUSON:* All right. This was a chain conspiracy,
21 ladies and gentlemen. It began with the supplier,
22 Mr. Alex Castro, seated here at defense table. I submit to you
23 in this case you saw the spectrum of drug dealing. You saw
24 from the California-based supplier all the way down to retail
25 dealers here in Grand Rapids. And I'm giving you a quick

1 overview of that.

2 The regional distributors were Yusef Phillips and
3 Ray Lee. And from there Yusef Phillips delivered to
4 Dante Howard and supplied him, Max Avery, and Andrea Thompson.

5 Ray Lee in turn, his brother, supplied Michael Yadell
6 Nelson, Solon Tatum, Erika Atkinson, and Aaron Cox who is
7 seated at the end of defense table over there.

8 As you heard the judge just instruct you, a
9 conspiracy is a criminal partnership. It's an agreement to
10 commit a crime. And in this case it's the crime of drug
11 trafficking. All defendants here are charged with conspiracy,
12 and as you heard the judge just instruct you, that takes two
13 things: (1) that two persons -- two or more persons conspired
14 or agreed to distribute or possessed with intent to distribute
15 controlled substances and that each defendant knowingly and
16 voluntarily joined the conspiracy.

17 You heard the testimony of a number of convicted
18 coconspirators in this case. And I submit that the government
19 doesn't always choose the witnesses in these cases. Drug
20 dealers deal with other drug dealers, and so we're dealing with
21 imperfect human beings as witnesses.

22 First was Yusef Phillips, a regional distributor.
23 Ray Lee, his brother. You heard from Toranita Meridy, also
24 known as Sis, who was a woman who helped out Yusef Phillips
25 down in Benton Harbor and helped supply and middle marijuana to

1 the defendant Dante Howard sitting behind me.

2 You heard from Tony Kirkland, who was a long-time
3 friend of Ray Lee, and as you heard him say had problems of his
4 own with alcohol and drugs, who was a retail supplier of heroin
5 in the Grand Rapids area as well as some cocaine. And you
6 heard Mr. Kirkland testify that he received a drug phone from
7 Erika Atkinson and his sales literally shot through the roof.
8 You further heard Mr. Kirkland testify that when Ms. Atkinson
9 returned from Texas back in 2016, Mr. Phillips asked
10 Ms. Atkinson -- or asked Mr. Kirkland to help Ms. Atkinson out
11 and give her back some clients.

12 You also heard from Derrick Swain who was supplied by
13 Solon Tatum. Not only did you have Mr. Lee testifying here
14 against Mr. Tatum, you also have Mr. Swain coming from
15 underneath Mr. Tatum, if you will, who is being supplied by
16 Tatum.

17 And finally, you heard the semi truck driver,
18 Salvador Cervantes. Phillips, Lee, and Cervantes all testified
19 against Alex Castro that he was the California-based
20 distributor here. And you have to take into account all of
21 these coconspirators' testimony. That's very natural in a drug
22 case. It's your job to determine how believable they are. And
23 as imperfect as any human being may be, including a convicted
24 felon, the one theme running through this case, ladies and
25 gentlemen, that I urge you to consider is that telephone

1 interceptions and electronic and video surveillance do not lie.
2 Those are the things here that you want to weigh against the
3 backdrop of everybody who sat in that witness chair and
4 determine who is telling the truth. That is your job as
5 jurors. And I submit based on the wire interceptions and the
6 electronic and physical surveillance presented in this case,
7 these six cooperating coconspirators were being truthful. But,
8 again, that's for you to decide.

9 I'm going to go now each -- since there are eight
10 defendants here in this trial -- and touch upon each, if you
11 will, in almost their own chapter of this closing. And I'm
12 going to start off with the lead defendant, Alex Castro.

13 Broadly, the evidence against Alex Castro with
14 Mr. Phillips' testimony, Mr. Lee's testimony, and
15 Mr. Cervantes' testimony. There were also 46 intercepted phone
16 and text conversations, surveillance of semi truck deliveries,
17 and photographs received from Mr. Phillips' phone that
18 Mr. Castro had sent to him.

19 As you heard Mr. Phillips and Mr. Lee testify, they
20 developed a close bond, almost a friendship, if you will, with
21 Mr. Castro. He invited them out to California. They shot
22 paintball together. You recall the movie trailer that was sent
23 and admitted into evidence here. Which may have been one of
24 the more colorful exhibits in this case. You know, they are
25 out there because right here you have Ray Lee sitting in that

1 movie trailer video.

2 And then you have Mr. Castro sending Mr. Phillips and
3 Mr. Lee photographs of him socializing and living a life.
4 These alone, of course, don't prove that Mr. Castro is guilty
5 of the conspiracy charged in the Indictment, but what they do
6 show is the close relationship between Mr. Lee, Mr. Phillips,
7 and Mr. Castro.

8 I'm going to turn to some telephone calls now. And
9 as you recall the judge's instruction here, the transcripts
10 that rolled with these calls are not evidence. You have to
11 recall what you heard. All right? But the transcripts are an
12 aid, and so they are a part of this closing.

13 Call 8.4.59 on July 28th of 2017, taken from target
14 phone 4. This is Mr. Castro reaching out to Mr. Phillips.
15 Recall the code that drug dealers speak in. Mr. Phillips
16 testified that "an original" meant a kilogram of heroin. And
17 here Mr. Castro is reaching out to Mr. Phillips asking him if
18 it's okay that that heroin -- whoops -- if it's not bricked up,
19 because it's in powder. Consider whether they are talking
20 about anything else here other than cocaine and heroin, ladies
21 and gentlemen. And I'd submit to you that they are not and
22 that this is very conclusive evidence that Mr. Phillips and
23 Mr. Castro conspired to traffic in drugs.

24 On July 30th of 2017, this is a text message from
25 Mr. Castro to Mr. Phillips letting him know that a semi truck

1 driver is going to be soon arriving in Grand Rapids. You'll
2 recall Special Agent Guidice testifying, I think for the first
3 time on the stand here when she was on direct examination by my
4 colleague, Mr. Baker, the physical surveillance was conducted
5 on July 17th, 2017, of the first semi truck delivery. GPS
6 trackers have gone off on Mr. Phillips' and Mr. Lee's vehicle.
7 Agents followed them to a meet location which happened to be
8 the Country Inn and Suites hotel off of 28th Street and saw the
9 two meeting with a semi truck driver. And it was through that
10 that law enforcement learned that the drugs in July and August
11 of 2017 were likely coming out on a semi truck. But what
12 happens here then is the wiretap corroborates that. Castro is
13 telling Mr. Phillips that he's going to be there tonight. And
14 then he asks what the count is going to be. How much money
15 should he be expecting in return for these load -- this load of
16 controlled substances.

17 Phillips responds, 230.5 is the count. \$230,000,
18 ladies and gentlemen. That is high-level drug trafficking I
19 submit to you.

20 Mr. Castro responds, "Cool. I'm dropping 15 chicas
21 and one original." You'll recall again the code. "Chicas"
22 means cocaine. "Original" means heroin.

23 Later, actually very early the next morning on
24 July 31st of 2017, after law enforcement surveilled and saw the
25 semi truck make the connection with Ray Lee and Yusef Phillips,

1 we have electronic surveillance of Ray Lee and Yusef Phillips
2 entering their stash house on Whispering Way.

3 We fast forward to August 2nd of 2017. And here is
4 an interception of Mr. Castro asking about the quality of the
5 heroin. Whether Mr. Phillips and his clientele are satisfied
6 with it. "Did you get a read on that original?" And you'll
7 recall Mr. Phillips testifying extensively how he used heroin
8 addicts as testers and that if anything was an 8 or above, he
9 was going to be good with it because he could sell that heroin
10 and make a profit off of it. And we have that corroborated,
11 ladies and gentlemen, right here in this phone call.

12 Further on in the phone call Castro asks, "How is
13 everything with the chica?" Meaning cocaine. Phillips
14 responds, "No complaints." And then Castro asks, "What's going
15 on with the smoke?" And you heard Mr. Phillips testify that
16 Mr. Castro was also supplying Ray Lee and Yusef Phillips with
17 marijuana. "Smoke" is code for marijuana.

18 Further on in the call they are discussing how to get
19 money to Castro. And he's talking about getting with my driver
20 or sister. And you recall, ladies and gentlemen, that
21 Yusef Phillips referred to Toranita Meridy as his sister.
22 Life-long friends with her. I believe Ms. Meridy testified
23 that she knew Yusef Phillips since the third grade, that they
24 grew up together. She testified that she traveled to Chicago
25 on three occasions to drop off money for Yusef Phillips. She

1 testified that on a trip in August of 2017 she felt she was
2 being followed by law enforcement and that she actually hired
3 an Uber driver to take her to Chicago. You'll recall she was
4 added to the lease to the stash house on Camelot. She
5 testified that she delivered marijuana to Dante Howard for
6 Yusef Phillips, approximately 40 pounds of marijuana. And she
7 also testified that she frequently picked up Etrevion Murphy on
8 Yusef Phillips' behalf from the Benton Harbor bus station. And
9 we'll get to Etrevion Murphy a little bit later.

10 On August 8th of 2017 -- you'll recall that
11 Ms. Meridy said she traveled to Chicago on or about August 9th
12 of 2017. And here we have Phillips asking if Castro has that
13 serial number. And you'll recall Ms. Meridy's testimony as
14 well as Mr. Phillips' testimony, it's identical almost, that in
15 order to confirm that she was meeting with the right person and
16 delivering Yusef Phillips' money to the right person, a
17 complete stranger in Chicago who she didn't know his first
18 name, Castro would send a picture of a serial number off a
19 dollar bill and that person on the other end in Chicago, when
20 Ms. Meridy went to Chicago, would have that same serial number,
21 and that way she could verify that she was giving hundreds of
22 thousands of dollars in drug proceeds to the correct person.

23 How do we know this? In addition to the wiretap we
24 know this because a picture of a dollar-bill serial number sent
25 from Mr. Castro was found on Yusef Phillips' phone. All of

1 this was admitted into evidence, ladies and gentlemen, here in
2 this trial and is here for your consideration.

3 The gentleman on the right, Ms. Meridy testified and
4 identified him as the individual that she dropped hundreds of
5 thousands of dollars in drug proceeds off to in Chicago three
6 separate times.

7 On August 15th of 2017 we have further evidence that
8 Yusef Phillips, Toranita Meridy, and Alex Castro were in a
9 conspiracy together, as well as a lot of other individuals.
10 Phillips tells Castro that he has an issue. Castro asks, "What
11 happened?" And then Phillips describes that Meridy had told
12 them that she was worried that she had a tail on herself when
13 she was going to Chicago this last time.

14 Fast forward to September 2nd of 2017. You'll recall
15 that the takedown occurred the following day on
16 September 3rd of 2017. And here again Castro is talking about
17 money. 228,000 and 294,000 dollars. He's again talking about
18 15 chicas and one original. 15 kilos of cocaine and one
19 kilogram of heroin. And he's talking about Yusef Phillips
20 paying him sufficient funds so that he can also credit him
21 towards the marijuana, the smoke that he is supplying him with.

22 On September 3rd of 2017, 1:34 a.m., Castro texts
23 Phillips and says "20 minutes away. No room, playa."

24 Do you recall that Phillips interpreted that to mean
25 that the semi truck driver would not be getting a room that

1 night, but he was just 20 minutes away from Grand Rapids. And
2 Phillips responds, "Okay. Call you in 15 minutes." Castro
3 responds back, "He's there, brother. All looks good."
4 Confirming that Salvador Cervantes had arrived in Grand Rapids.

5 And we all recall what happens next, ladies and
6 gentlemen. Law enforcement was conducting aerial surveillance,
7 as well as physical surveillance on the ground, and you heard
8 the testimony of Officer Beracy from the Grand Rapids Police
9 Department telling you what he saw in that helicopter that
10 night through the high-powered lens. He saw Yusef Phillips and
11 Ray Lee meet with the semi truck driver at the
12 Country Inn and Suites, as they had done on prior occasions, as
13 was their MO, pick up the load, and head towards their stash
14 house.

15 Law enforcement triggered into action on this.
16 Mr. Cervantes was stopped at the rest area off of I-96
17 eastbound in Saranac. And you heard MSP Trooper Sinke testify
18 that he searched the cab of the semi, he found a trap, and he
19 located this load of cocaine and heroin as well as \$400,000 in
20 the trap. I submit to you this is conclusive, significant
21 evidence of Mr. Castro's guilt on Count 1 of the conspiracy.

22 Your verdict form will look like this. Based on this
23 evidence that I have just summarized to you, we believe he is
24 guilty of this charge and ask you to return a guilty verdict.
25 And we ask that you make a finding of more than 1,000 grams of

1 heroin. Because when you think about it, he was sending out
2 one kilo each and every load. There were multiple loads.
3 Easily, based on the simple math, quickly gets beyond the
4 one-kilogram threshold.

5 You're also going to have to consider how much
6 cocaine Mr. Castro is sending out if you find him guilty of
7 this conspiracy charge. We request that you return a finding
8 of over 5,000 grams of cocaine. Again, based on one load, he's
9 sending out 15 chicas each load. That alone is 15 kilos of
10 cocaine, which gets him over this level.

11 And then as to the marijuana, you have to decide
12 between 50,000 grams or more or less than 50,000 grams. And
13 based on the evidence and the testimony in this case, there
14 were a hundred pounds of marijuana that was seized from the
15 Cascade Road house of Ray Lee and Yusef Phillips. This was
16 marijuana that they testified was sourced by Mr. Castro. We
17 believe the evidence showed that he was dealing in more than
18 50,000 grams of marijuana.

19 Next I want to move to Michael Nelson. Mr. Lee
20 identified Michael Nelson who he knew as Poppy or Tiny. He
21 testified that he knew Poppy since he was 16 years old.
22 Mr. Nelson is sitting right here at the table. He testified
23 that Poppy began purchasing drugs from him starting in 2015.
24 He testified that Michael Nelson only wanted to purchase
25 cocaine and he only dealt cocaine to Mr. Nelson. He testified

1 that Nelson began by purchasing approximately one ounce of
2 cocaine from him and that these quantities then grew, and they
3 grew to approximately three to four ounces every couple of
4 weeks.

5 In addition to Mr. Lee's testimony on this matter, we
6 know that Mr. Nelson is guilty of these charges again based on
7 the corroborating video surveillance and wiretap telephone
8 interceptions. And I want to go through some highlights of
9 those for you right now.

10 This text message here -- or call, excuse me -- again
11 illustrates the code that drug traffickers talk in. Lee asked,
12 "What's going on?" Nelson, all he had to do was say "Three."
13 And you heard Mr. Lee testify that he knew that meant three
14 ounces of cocaine based on their drug-trafficking relationship.

15 In addition to Mr. Lee saying that, you heard
16 testimony of virtually every other coconspirator who testified
17 in this case saying that they too talked in code. And you also
18 heard the testimony of the government's opinion witness,
19 Special Agent Burns, who has been a DEA agent for 28 years,
20 testify that indeed drug traffickers usually talk in code
21 because they don't want to get caught. They will frequently
22 use numbers with no nouns attached to describe what it is they
23 want. And I submit that you're seeing that here in the wire
24 interceptions, ladies and gentlemen.

25 What happened to further corroborate matters after

1 Ray Lee and Michael Nelson had that interaction? Electronic
2 surveillance finds Ray Lee entering the stash house at Camelot
3 20 minutes after his call with Nelson. That's
4 Government Exhibit 81. And then Government Exhibit 82 is him
5 leaving shortly thereafter.

6 And then GPS surveillance tracked Ray Lee's vehicle
7 to his home at 113 Temple, Southwest, here in Grand Rapids.
8 Based on this evidence, ladies and gentlemen, I submit to you
9 that you can find Mr. Nelson guilty of possession with intent
10 to distribute cocaine on July 25th of 2017.

11 Now, again, Mr. Nelson is also charged in the
12 conspiracy. They are not mutually exclusive charges. And what
13 I mean by that is, if you see an ongoing relationship of drug
14 trafficking between two individuals to achieve a common
15 objective, that's a conspiracy, and you can consider possession
16 with intent to distribute charges as possible evidence of that
17 conspiracy as well. Just keep in mind conspiracy is merely an
18 agreement. Possession with intent to distribute you have to
19 actually or constructively possess drugs. And we know that
20 Mr. Nelson possessed these drugs because Mr. Lee drove directly
21 to his house and met with him after going to the stash house,
22 after the call where he ordered up three ounces of cocaine.

23 Now, real quickly, the elements for possession with
24 intent to distribute, as the judge just instructed you, are
25 that the defendant knowingly or intentionally possessed a

1 controlled substance and he intended to distribute it.

2 You have not heard any testimony in this case that
3 Ray Lee was distributing three ounces of cocaine to
4 Michael Nelson so he could use it. In fact, you've heard
5 testimony that suggested quite the opposite. From
6 Special Agent Burns that a user quantity of cocaine is roughly
7 a tenth to a half a gram. Three ounces, ladies and gentlemen,
8 is a distribution quantity of cocaine.

9 You will see this on your verdict form with regard to
10 the possession with intent to distribute charge, and we ask
11 that you find Mr. Nelson guilty.

12 I'm going to move on now to Count 10. And again,
13 Count 1 is highlighted up here as well because you can consider
14 that evidence when you're considering whether he actually
15 conspired with Ray Lee and others to distribute and traffic
16 drugs.

17 On August 11th of 2017 there's a call from Ray Lee to
18 Michael Nelson, and he's telling Michael Nelson at that point
19 that he better load up because people are going to be taking a
20 break for a month. He's telling Mr. Nelson here "Get your
21 cocaine now because there's going to be a dry spell because my
22 supplier is going to be taking a break from supplying cocaine."
23 You've not heard any other testimony or evidence in this case,
24 ladies and gentlemen, that suggests that Ray Lee was supplying
25 Mr. Nelson with anything other than cocaine.

1 You'll recall that Ray Lee then departed and went to
2 the Camelot stash house. That's Government Exhibit 100. And a
3 little over two hours later he says that he's on his way
4 towards him. Are you ready? Mr. Nelson responds that he's not
5 at home. He's actually getting his tire plugged at
6 Discount Tire.

7 The call further on, approximately an hour later,
8 Nelson confirms that he's at his crib. He's at his home.
9 You'll recall from this call that Mr. Lee was actually at the
10 barber shop at that point and offered for Mr. Nelson to come to
11 the barber shop to pick up the cocaine. Mr. Nelson said no, he
12 would prefer to have the cocaine delivered to him at his house.
13 So Lee proceeded there.

14 And you heard the testimony of Detective
15 Lindsey Moorhead who physically surveilled Mr. Lee from the
16 location of the barber shop, I believe she testified on Eastern
17 and Bates, to Mr. Nelson's house at 113 Temple, Southwest.
18 Based on this evidence, ladies and gentlemen -- this is going
19 to be your verdict form again -- I submit you can find
20 Michael Nelson guilty of possession with intent to distribute
21 cocaine on August 11th of 2017.

22 And as to Count 1, you heard the judge instruct you
23 that the conspiracy charge does not require proof that the
24 defendant knew everything about the conspiracy or everyone else
25 involved.

1 The government is not trying to make Mr. Nelson a
2 bigger drug trafficker than he may be in relation to the other
3 defendants here, but as I noted to you in the beginning of this
4 opening, this is a chain conspiracy that spans the spectrum of
5 levels of drug trafficking. Going from as high as Mr. Castro,
6 the California place -- California-based supplier, dealing in
7 the hundreds of thousands of dollars in drug transactions, to
8 Mr. Lee and Mr. Phillips at the regional level who are
9 significant Grand Rapids-based distributors, to their retail
10 distributors all the way down to a Derrick Swain who is getting
11 dealt with by Solon Tatum here in the back row.

12 Based on this, ladies and gentlemen, I submit that
13 Mr. Nelson is guilty of the conspiracy. And when you consider
14 or not the quantities that he was involved with and that were
15 reasonably foreseeable to him -- this is where a little math
16 comes in -- if you're getting three ounces of cocaine every
17 couple of weeks, it takes you approximately 10 1/2 weeks to get
18 to the 5-kilogram threshold. So I would submit, ladies and
19 gentlemen, that you can find Mr. Nelson guilty and responsible
20 for 5,000 grams or more -- or excuse me -- 500 grams but less
21 than 5,000 grams of cocaine.

22 I'm going to move now to Solon Tatum. As you've
23 heard through a lot of testimony, Mr. Tatum is Mr. Lee's --
24 Ray Lee's unlicensed barber who worked in a shop near Eastern
25 and Bates. Ray Lee testified that he knew Solon Tatum as Solo.

1 He testified that Solo knew that Ray Lee had a reputation for
2 being a drug trafficker and that Solo approached Mr. Lee about
3 purchasing a kilogram of cocaine. Ray Lee testified that he
4 sold two kilograms of cocaine to Solo in the summer of 2017.
5 The first occurring on July 14th of 2017 and the second
6 occurring on July 18th of 2017. And so you have two possession
7 with intent to distribute charges to consider as to Mr. Solo as
8 well as the conspiracy charge.

9 And as to the first charge, you heard testimony from
10 Mr. Lee that on July 14th he went to the stash house to pick up
11 a kilogram of cocaine for Mr. Solo. He emerged about five
12 minutes later, 9:23 in the morning. And then after that you
13 heard Officer Michael Mesman, who is a retired Grand Rapids
14 Police Department officer, testify that he physically
15 surveilled Ray Lee to a hotel parking lot in back of a
16 Panera Bread off of 29th Street in Grand Rapids. He saw
17 Ray Lee make contact with a driver of a black Range Rover. He
18 followed up and found out that that Range Rover, from the
19 registration records, was registered to Solon Tatum. So you
20 have Ray Lee saying that this happened and you have
21 Officer Mesman's corroborating physical surveillance that tells
22 the same story that Ray Lee tells because he observed it with
23 his own eyes.

24 You'll have a similar verdict form. We submit based
25 on this evidence you can find him guilty of the possession with

1 intent to distribute charge on July 14th of 2017. And we all
2 know that one kilogram of cocaine is a thousand grams, so we
3 ask that you find Solon Tatum guilty of between -- more than
4 500 grams of cocaine.

5 As to Count 3, the possession with intent to
6 distribute charge on July 18th of 2017, Ray Lee was picked up
7 on video surveillance walking out of the Camelot stash house
8 with a Food Saver box. Ray Lee testified that this was a
9 kilogram of cocaine destined for Solon Tatum.

10 You heard Nick Allers from the Woodland Mall testify
11 about the video surveillance system. And after this case I
12 don't think I'm going to be doing anything in the Woodland Mall
13 parking lot. That video surveillance system picked up Ray Lee
14 picking up the Food Saver box, excuse me, putting it into the
15 back of Solon Tatum's Range Rover, and then meeting with
16 Solon Tatum in the vehicle. And I submit, ladies and
17 gentlemen, and as the officers testified that observed this,
18 what I'm circling right there is roughly \$30,000 or more in
19 cash. Based on the circumstances of this case, the judge will
20 instruct you that you can use your common sense and everyday
21 experience. And you heard Mr. Tatum take the stand and testify
22 that he was purchasing a used scanner from Ray Lee. I ask you
23 whether that bag of cash -- and it's right for you to consider
24 in your common sense and everyday experience -- is payment for
25 a scanner or whether it's payment for a kilogram of cocaine.

1 The judge instructed you that when you consider the
2 credibility of witnesses, you're also allowed to judge
3 Mr. Tatum's testimony on the same level and determine whether
4 it makes sense in light of all the evidence presented in this
5 case.

6 You also heard Mr. Tatum further testify about
7 running a credit business. I don't know that we saw a lot of
8 other evidence beyond his own statements that he was running a
9 credit business. Maybe one from another witness the defendant
10 called. But you really have to consider here whether Ray Lee,
11 who has over \$400,000 stashed in his Cascade home five miles
12 away from the Woodland Mall parking lot, is going to be going
13 to Solon Tatum for credit advice, particularly when drug
14 dealers cannot use the banking system because they have too
15 much cash and it will be detected if they start making
16 deposits, significant deposits into the bank.

17 Here is a better view of Ray Lee exiting the
18 Range Rover carrying that bag of cash. And there's no dispute
19 in this case, ladies and gentlemen, that that was Solon Tatum
20 in the parking lot and that's his Range Rover. The
21 registration paperwork was seized at his house on Pinebrook
22 during execution of search warrants, as was the financing
23 statement here at Government Exhibit 128J. And in considering
24 all of the evidence and testimony in this case, it's
25 appropriate for you to consider whether Mr. Tatum is truly

1 making \$110,000 or more in cash as a barber working on the
2 corner of Eastern and Bates, not paying taxes, being able to
3 afford a \$1,500-a-month lease payment on a Range Rover as well
4 as an additional payment on a 2013 BMW, all the while living in
5 his basement with a giant shoe collection. I submit based on
6 common sense, ladies and gentlemen, that that can be viewed as
7 evidence of unexplained wealth. There's no explanation other
8 than Mr. Tatum's own testimony in this case how he is getting
9 this kind of money to drive that kind of car, have that many
10 shoes, have a BMW on top of it.

11 Based on this evidence, ladies and gentlemen, we'd
12 ask that you find Mr. Tatum guilty of Count 3. And again, a
13 kilogram is in excess of 500 grams, so we'd ask that you make a
14 finding that Mr. Tatum is responsible for more than 500 grams
15 of cocaine.

16 You further heard Ray Lee testify that Solon Tatum
17 was interested in trying out the market for heroin. You heard
18 Ray Lee testify that on July 26th of 2017 he visited the stash
19 house at Camelot to pick up some tester packets of heroin for
20 Mr. Tatum so he could determine whether he wanted to expand his
21 portfolio of drug trafficking and get into heroin in addition
22 to cocaine. Electronic surveillance through video picked up
23 Mr. Lee at the stash house on Camelot, saw him going in, saw
24 him going out at 1:30 and 1:38, and then later that day,
25 approximately three hours later, you get this call from

1 Mr. Tatum to Mr. Lee asking, "Which one has been touched? The
2 one with or without the rubber band?" Lee responds, "Without
3 the rubber band." Tatum says, "It ain't been touched or has?"

4 You heard Mr. Lee testify that those tester packets
5 he provided, one was highly pure or raw heroin and another he
6 had put cut on it because Mr. Tatum wanted to test the market
7 for both.

8 Now, you heard Mr. Tatum testify that this call was
9 all about clippers. And I'm not really sure from his testimony
10 as I heard it what the result of this call was with regard to
11 clippers. But if Mr. Tatum is such an expert barber and so
12 good souping up clippers, why is he having to ask Mr. Lee these
13 kinds of questions three hours after Mr. Lee left the Camelot
14 stash house and had this call? Mr. Lee was giving Mr. Tatum
15 heroin, not clippers. And it's appropriate for you to consider
16 that if Solon Tatum is as good of a barber as he is, what is he
17 doing working on clippers for people for free? Especially
18 while he's receiving a bag of cash in the Woodland Mall parking
19 lot. It's all about drug trafficking, ladies and gentlemen.
20 You can use your common sense and everyday experience to weigh
21 the credibility of these witnesses in light of the
22 corroborating information, surveillance, and wire interceptions
23 to make that determination.

24 You further heard Ray Lee testify that he spoke with
25 Solon Tatum and that he was interested in getting more cocaine

1 from him. But Ray Lee also testified that Mr. Tatum didn't pay
2 in full for his second kilo so he wasn't interested in getting
3 him more without getting that payment in return. And Lee is
4 responding that he might have more cocaine on Monday. This is
5 happening on August 12th of 2017.

6 And then we fast forward to Monday, August 14th of --
7 that should be 2017, not 2018 -- and again we have Tatum
8 meeting Ray Lee, walking out to his Audi with a box. Ray Lee
9 testified that that box contained cash for payment for that
10 kilo.

11 And again, as I noted, you're seeing the spectrum of
12 drug trafficking in this case, ladies and gentlemen, because
13 it's a chain conspiracy. You heard the coconspirator
14 Derrick Swain testify that he knew Tatum from Tatum at his
15 barber shop and that he was supplied cocaine by Tatum between
16 Christmas and Thanksgiving of 2016 and for a while into 2017.
17 You heard Tatum -- or excuse me -- Swain testify that he
18 received almost in aggregate 30 ounces of cocaine from
19 Mr. Tatum. And that he was paid approximately 150 -- \$1,050
20 per ounce is what Tatum charged. And you also heard Mr. Swain
21 testify that he only ended up buying about 30 ounces in
22 aggregate because the cocaine was not very good. But again
23 here as to Mr. Tatum, you have not only his supplier above him
24 testifying that he was distributing to him but also one of
25 Mr. Tatum's customers below him saying he's a drug dealer and

1 that this isn't about barber shop clippers and used scanners.

2 So, again, you have to consider whether Mr. Tatum
3 conspired with anybody here. And I submit that he did engage
4 in a common scheme with Mr. Lee and Mr. Tatum and that it was
5 part of the broader chain conspiracy and that you find him
6 guilty on Count 1 and that as to heroin that it would be less
7 than 100 grams, because, again, he received tester packets.
8 Mr. Tatum did not receive, based on the evidence submitted in
9 this case, more than the tester packets of heroin. But as to
10 the cocaine, two kilos, more than 500 grams.

11 The next defendant is Dante Howard. You heard
12 Yusef Phillips testify that Dante Howard was a Benton Harbor
13 customer of his and that he initially became acquainted with
14 Howard in 2013 or 2014 because Yusef Phillips, being the
15 regional distributor that he is, testified that he tried to
16 keep track of who was drug dealers. He was keeping tabs on his
17 market and individuals that he might be able to supply.

18 Mr. Phillips testified that the two met and began
19 doing small deals which started at 20 grams and then it made it
20 to 50 grams, and Phillips testified that by 2016 or early 2017
21 he was supplying Howard with one kilogram of cocaine and a
22 hundred grams of heroin per month. And, of course, we have
23 more phone interceptions and surveillance for you to determine
24 whether Mr. Phillips is being truthful about this, and from the
25 government's case and the evidence in this case we believe that

1 he is.

2 On August 2nd of 2017 Howard calls Phillips and is
3 trying to arrange a drug transaction. And you'll see in this
4 exchange that Phillips responds, "Let me find the dog right
5 quick." And you heard Mr. Phillips testify that the dog was
6 Etrevion Murphy. Even when Mr. Murphy sat in that chair, he
7 didn't deny that he worked for Yusef Phillips. He testified
8 that he transported drugs down to Benton Harbor for
9 Yusef Phillips by bus, that he transported drugs on a couple
10 occasions to Detroit and Columbus, that Phillips supplied
11 Murphy with a customer base, and that Phillips even provided
12 Murphy with a white Volkswagen Golf.

13 You have to consider the testimony of Mr. Murphy's
14 and decide whether he's being truthful about this, the matters
15 in this case, just like any other witness. The thing that he
16 denied was knowing Dante Howard. And I would submit, ladies
17 and gentlemen, based on the wire interceptions that we're about
18 to show here, Mr. Phillips was working with Mr. Howard, and the
19 reference to finding the dog meant that Mr. Howard knew exactly
20 who Etrevion Murphy was and that Mr. Murphy was not being
21 truthful on that stand when he said he did not know
22 Dante Howard.

23 On August 2nd of 2017, the same day that Phillips
24 just said to Howard "Let me find the dog," Phillips reaches out
25 to him later that day, the call occurred at 4:16 p.m., and he

1 asks -- because Murphy was essentially a runner for Phillips,
2 he paid him to do runs, pick up money, and drop off drugs --
3 "Do you want to make \$150 right quick?" And Murphy says,
4 "Yeah, I want to." And you heard the testimony not only of
5 Etrevion Murphy about his trips to Benton Harbor but also those
6 of Toranita Meridy who picked up Etrevion Murphy.
7 Toranita Meridy, who knew Dante Howard, who was in fact his
8 sister-in-law, they were Benton Harbor people.

9 So we have a call later that night where Phillips is
10 trying to arrange with Howard to do a deal at the Woodland Mall
11 parking lot near the cinema. This call occurs at 8:04 p.m.
12 Howard says "Let's make that happen same way." Again, they are
13 talking in code. They have done this before, ladies and
14 gentlemen, and that's all they need to say is "We're going to
15 make this deal happen the same way as we did before" because
16 they are worried about their phones being tapped and being
17 surveilled by law enforcement. And we're going to see a little
18 more of that here in the conversations between Mr. Phillips and
19 Mr. Howard.

20 How do we know that Mr. Howard is doing something
21 illegal? He wants everything done before his sister gets there
22 with the kids. He doesn't want to expose his kids to his drug
23 trafficking.

24 Phillips says "Tell her to meet me at the mall." And
25 they are trying to get this deal done that day because it's

1 8:00. So what does Mr. Phillips do after this call with
2 Mr. Howard? He goes to the stash house at Camelot and
3 testifies that he's picking up drugs for Dante Howard.

4 Later that evening, approximately 20 to 30 minutes
5 later, Phillips is calling Howard and he's telling Howard "Tell
6 her I'm right here by the cinema." He's asking Howard to tell
7 his courier that he's waiting there right by the cinema for her
8 to do a quick drop.

9 A subsequent call, four minutes later -- and you
10 recall there was a little confusion on this phone call.
11 Mr. Howard thought his courier might be driving a white Denali
12 and was telling Mr. Phillips that. Instead she was driving a
13 black car. And once they got that squared away, you see the
14 black car come up and you see Mr. Phillips approach it as he
15 testified and drop off the drugs to Mr. Howard's courier for
16 Mr. Howard. Right after that they are texting each other to
17 make sure the deal was done and everything is good.

18 How else do we know Mr. Howard is involved in drug
19 trafficking? Because he's dropping his phone just like
20 Yusef Phillips and Ray Lee do. You heard Mr. Phillips testify
21 that when Mr. Howard here dropped his phone, he would text him
22 and say, "BH, new number." Stands for Benton Harbor, new
23 number.

24 And again, that same story that Phillips was telling
25 Castro all the way out in California he's telling Dante Howard

1 now. It's now August 10th of 2017, one day after Ms. Meridy's
2 trip to Chicago where she takes the Uber ride because she's
3 worried law enforcement is surveilling her. And he's reporting
4 to Dante Howard, "Sis hit me up. Said an MFer was following
5 her," meaning a cop.

6 And we know that that is Toranita Meridy. She
7 testified that Phillips called her Sis, that they were
8 life-long friends. And we know that Toranita Meridy, who
9 testified on the stand here, is the sister-in-law of
10 Dante Howard.

11 They continue their call. And here we have
12 verifiable proof that they are talking about
13 countersurveillance and countermeasures to evade the police.
14 Howard is talking about this person on the Southwest
15 Enforcement Team. Referring to police. Talking about the FBI
16 and DEA. Ladies and gentlemen, this is not the mind of an
17 innocent person. People who aren't involved in criminal
18 activity aren't worried about getting caught by police and
19 engaging in countersurveillance measures.

20 He's going a step further here and worrying about the
21 devices they are putting on stuff. Meaning GPS trackers, which
22 you have seen and heard testimony of were put on on this case
23 by law enforcement. This is the mind of a guilty man because
24 he's involved in drug trafficking. And this conversation with
25 Yusef Phillips is proving it.

1 How else do we know? This was a very lengthy
2 conversation. And these are just snippets of it. But how else
3 do we know that Dante Howard is drug trafficking? Because he's
4 not going to sell anybody a gram for 500 because he was telling
5 Yusef Phillips in this conversation that undercover officers
6 doing controlled buys pay top dollar, and he's saying if they
7 are doing that, you have to know that that's the police. You
8 can't let greed get the best of you in that situation.

9 This is not the mind of an innocent man, ladies and
10 gentlemen. Dante Howard is in a conspiracy with
11 Yusef Phillips, he's in a conspiracy with Toranita Meridy, and
12 one with Etrevion Murphy and others. And it was all drugs that
13 were supplied by Castro as part of this bigger chain conspiracy
14 that's been presented to you.

15 Go to call 8.4.1508 at 4:51 p.m. on August 11th.
16 This gets back to the Etrevion Murphy issue. Howard is telling
17 him "My man is there already." Phillips is telling him "Let me
18 hit him and see right quick." So what happens? It's
19 4:51 p.m., ladies and gentlemen. 4:52 p.m. Yusef Phillips
20 calls Etrevion and asks "Where you at, man?" Etrevion tells
21 him he's at 44th and Breton. And Yusef Phillips is telling him
22 he wants him to go and do a deal. And Etrevion responds that
23 "I'm going to be on my way." Phillips and Howard were setting
24 up a deal that day and Murphy was involved right in the middle
25 of it, ladies and gentlemen. And you can consider these wire

1 interceptions, balance those against Murphy's testimony on
2 whether or not he knew or was involved with Dante Howard, and I
3 would submit to you that he was not telling the truth on that
4 stand.

5 So as to the Count 1, again, here is the
6 verdict form, we'd request that you find Mr. Howard guilty of
7 the overarching conspiracy. You're going to have to make a
8 decision on the weight. Yusef Phillips testified that every
9 month he was giving Howard approximately a hundred grams of
10 heroin, supplying him with that quantity. A kilo of cocaine he
11 got to and a hundred grams of heroin. And after 10 months
12 you're at a kilo of heroin. And Yusef Phillips testified that
13 he was doing this for a couple of years.

14 You're also going to have to make a decision on the
15 cocaine quantity. And, again, if you're doing a kilo of
16 cocaine a month and supplying him with that quantity, it's only
17 going to take you five months to get to that 5,000 threshold.

18 Now as to the marijuana, you heard Ms. Meridy testify
19 that Dante Howard, that she supplied him. Remember, she
20 received a hundred pounds of marijuana from Yusef Phillips?
21 Gave about half of it to an individual named Demetrius Gaines,
22 gave the other half to Mr. Howard. You'll also have to make
23 the decision on the weight of the marijuana. And I believe the
24 evidence in this case, ladies and gentlemen, is that this
25 marijuana deal was not a one-time deal.

1 Let's move to Erika Atkinson. We have conspiracy and
2 possession with intent to distribute on Count 11. The primary
3 coconspirator that testified against Ms. Atkinson was Mr. Lee.
4 He testified that she was a 50- to 100-gram-a-month heroin
5 customer from 2014 to 2015, that she moved to Texas, and that
6 she was a 50- to 100-gram-a-month heroin customer from 2016 to
7 the arrest. And that she sold her customers to Tony Kirkland.
8 And you heard this from Kirkland as well. And there were six
9 phone conversations intercepted involving Ms. Atkinson. I'm
10 going to focus on the one that involves her
11 possession-with-intent-to-distribute count.

12 There were also two deliveries at Ray Lee's home.
13 You'll recall the video surveillance of the pole cam outside
14 the Cascade house where Ms. Atkinson pulls up, backs in, goes
15 into the house. And you'll recall Ray Lee testifying that he
16 had a physical relationship with Ms. Atkinson at some point and
17 that this is why he had this level of trust in her and would
18 allow her into his home.

19 Going to August 12th of 2017. Again, they are
20 speaking in code, ladies and gentlemen. All Lee has to say,
21 "What do you want me to do?" "I need a hundred and I need a
22 one." Lee's understanding exactly what she's saying. "Okay, I
23 gotcha." And she says, "One 28." And you heard Ray Lee
24 testify that meant 28 grams of cocaine and a hundred grams of
25 heroin. And you know, ladies and gentlemen, that this is not a

1 user quantity of cocaine or heroin. You heard the testimony of
2 Special Agent Burns that a user quantity of heroin is about a
3 tenth of a gram. A tenth of a gram. And she's ordering up a
4 hundred grams of heroin.

5 On August 13th of 2017 you see Ray Lee going in and
6 out of the stash house at Camelot immediately before
7 Erika Atkinson shows up at his door. So not only did you hear
8 the testimony of Ray Lee on this, but you also heard the
9 testimony of Tony Kirkland. And you get to judge his
10 credibility as well. His story is consistent with Ray Lee's
11 story. His story is that he was a lower-level drug dealer
12 until Ms. Atkinson was moving to Texas and Ray Lee did him a
13 favor, sold him Ms. Atkinson's phone contacts, and then his
14 sales exploded. Not only did Mr. Kirkland testify to that, he
15 identified Erika Atkinson in court. He said, "That is her.
16 That is the woman whose phone contacts I got."

17 Based on the telephone surveillance, the video
18 surveillance, ladies and gentlemen, I submit you should find
19 Ms. Atkinson guilty of the conspiracy, because, again, this was
20 an ongoing scheme, as Ray Lee testified. It wasn't a one-time
21 deal. And that he was regularly supplying her on a monthly
22 basis. And after you decide that, again, he did this and
23 supplied her, was his testimony, for approximately four years
24 in two phases. One before she went to Texas, one after she
25 went to Texas. And even if you're supplying 50 grams of heroin

1 per month, and we saw her just order up a hundred on the phone,
2 it's going to take you just 20 months to get to a thousand
3 kilograms -- or excuse me -- a thousand grams of heroin.

4 As to the cocaine, we'd submit the evidence presented
5 shows that she was involved in less than 500 grams of cocaine
6 based on the weights that she was ordering because she was
7 primarily ordering and distributing heroin. And then based on
8 this surveillance, which dealt specifically with August 13th of
9 2017, we ask that you find Ms. Atkinson guilty of Count 11,
10 which is the possession-with-intent-to-distribute charge, which
11 you can consider in relation to the overall conspiracy. And
12 that based on that deal alone where she ordered up a hundred,
13 that she was involved in more than a hundred grams of heroin.

14 Let's move to Mr. Avery. He's been indicted not only
15 in the conspiracy, but he also has a substantive
16 possession-with-intent-to-distribute charge. Mr. Phillips
17 testified against Max Avery. He testified that he was a 100-
18 to 150-gram heroin customer. That it was every month. That
19 Mr. Avery was from Indianapolis. That he knew Mr. Avery from
20 his childhood. And you saw evidence of five phone and text
21 conversations. And I want to focus on one from August 5th of
22 2017 where Max Avery is calling Yusef Phillips. You heard
23 Yusef Phillips testify that he wasn't sure he wanted to
24 continue dealing with Max Avery because Mr. Avery is asking him
25 to put a ticket on it. What Yusef Phillips meant -- said that

1 meant was, "Well, if you charge me more for heroin, am I going
2 to get better quality of heroin?" And that's what Mr. Avery is
3 saying by "What could be if you're charging me a hundred
4 dollars?" And you heard Yusef Phillips on that stand say "I
5 mix my heroin, I do it consistently, I've got a consistent
6 supply, I maintained quality at a level 8 or higher based on
7 the testers that I use." And you heard Mr. Phillips testify on
8 that stand that Mr. Avery was going to want to get special
9 heroin for himself and he didn't really want to continue
10 dealing with him. But we know that Mr. Avery and Mr. Phillips
11 dealt together and did a deal together because there's a
12 delivery on September 1st of 2017. This is a call from target
13 phone 7 where Mr. Avery says "I'm on my way" and Mr. Phillips
14 responds "Here."

15 And how do we know where they are at? We know where
16 they are at because they are in the J.C. Penney area of the
17 Woodland Mall parking lot on the Beltline. And the camera is
18 picking up Max Avery right there. Indisputable proof that they
19 are meeting together based on Yusef Phillips' testimony and
20 this surveillance to deal and traffic drugs together, to engage
21 in a conspiracy together.

22 Max Avery gets into the vehicle and then afterwards
23 he returns to his vehicle, which the cameras picked up as
24 having Indiana plates. And this was some of the surveillance
25 where you saw Max Avery climbing into the back of that white

1 Suburban. And he was in there for a while right after he had
2 emerged from Yusef Phillips' vehicle. And you have to ask
3 yourself "Why is Max Avery climbing into the back of that
4 vehicle for a while?" He's doing it to conceal the heroin that
5 Yusef Phillips just supplied him with. Based on all the
6 circumstances of the case, your common sense tells you, ladies
7 and gentlemen, that that was a drug deal and that Mr. Avery was
8 concealing drugs in the back of his Chevy Tahoe.

9 You're going to see the verdict form for conspiracy,
10 and based on these interactions with Mr. Phillips and his
11 testimony and the wire and video surveillance, we ask that you
12 find him guilty of the conspiracy. And that with regard to
13 heroin you find him responsible for 1,000 grams or more of
14 heroin. Because, again, he's getting 100 to 150 grams every
15 month. Yusef Phillips testified based on my recollection that
16 he was supplying Avery at least three years. And if you do the
17 math again, it's very simple math, you're getting in excess of
18 one kilogram of heroin.

19 Based on this surveillance, which again was a
20 substantive charge, which can also be considered about whether
21 Yusef Phillips and Max Avery conspired, we ask that you find
22 him guilty of Count 12, which is possession with intent to
23 distribute heroin, and that he was responsible for 100 grams or
24 more on that particular date because he ordered a hundred grams
25 again from Yusef Phillips.

1 Let's move to Andrea Thompson who is sitting here in
2 the back row. Yusef Phillips testified that he had somewhat of
3 a special relationship with Ms. Thompson. I think it's pretty
4 undisputed in this case that they had a physical relationship,
5 and maybe more than just a little bit of that. And we know
6 that as well based on the level of trust that Yusef Phillips
7 placed in Ms. Thompson.

8 Ms. Thompson also then got into Yusef Phillips' drug
9 trafficking. And perhaps it began with helping him lease the
10 stash house at Camelot. But my memory serves actually
11 Yusef Phillips testified that even before she began leasing the
12 Camelot stash house, which happened in or about 2015, that on a
13 couple of occasions Phillips said that she actually drove
14 controlled substances back from Chicago when he was getting
15 supplied out of Chicago. I believe the testimony from
16 Mr. Phillips was that he met Ms. Thompson in around 2011. So
17 he had known her for a while and he trusted her. And I think
18 he cared about her. But he also got her into drug trafficking.
19 And this is indisputable proof that Ms. Thompson leased the
20 stash house.

21 And we also know that Toranita Meridy was added to
22 the stash house. Ms. Meridy's signature here, which she
23 verified on the stand, is indisputable proof that she also knew
24 what was going on in this conspiracy. She was added right next
25 to Thompson. They helped conceal the true use and ownership of

1 this stash location, because drug dealers don't want their name
2 on things.

3 Ms. Thompson's special relationship with Mr. Phillips
4 is also indicative by the fact that she wired money to
5 Mr. Castro. This is at Government's Exhibit 142. Her name is
6 right there at the top. It may be a little difficult to see
7 here, but if you look at the exhibit book at 142, it says
8 "Funds in the benefit for Alex Castro." And then there's
9 Ms. Thompson's signature. It's identical to the signature that
10 you saw on the lease agreement for Camelot.

11 But we also know that Ms. Thompson became a
12 retail-level dealer for Mr. Phillips and began middling deals.
13 He asks her, "What's up with your homeboy?" Do you recall that
14 Phillips testified that Ms. Thompson's homeboy, as he calls him
15 there, was receiving drugs from Ms. Thompson on front and not
16 paying her back very quickly and that Ms. Thompson was in some
17 financial straits. And you're going to see that in these
18 intercepted calls.

19 You further recall Mr. Phillips' testimony relaying
20 to Ms. Thompson that you should -- tell her homeboy that if
21 he's having a slow week here, it's a problem, because the first
22 week of the month is when the people who were receiving state
23 assistance get their checks. And Mr. Phillips testified that
24 that first week of the month is frequently some of the most
25 profitable weeks in the career of a drug trafficker. Because

1 people who are addicted and they are on state benefits are
2 getting money in their hands and they are coming to buy drugs.

3 The call continues. And how do we know that this is
4 about drug trafficking, ladies and gentlemen? Because
5 Ms. Thompson's customer here is being so slow, Yusef Phillips
6 is imploring her not to give him more than 20 grams if he can
7 only move 20 grams. Mr. Phillips is a smart businessman I
8 would submit. You heard him testify that he never just fronted
9 drugs for absolutely free. He might front -- get paid
10 three-quarters of the way and maybe have someone owe him a
11 couple hundred dollars or something like that. And he's
12 actually providing business advice to Ms. Thompson. And we
13 know that this is about drug trafficking. He's actually not
14 using very coded language here. He's talking about grams.
15 These are grams of drugs.

16 We further know that this is about drug trafficking
17 because Ms. Thompson is now on this call on August 3rd of 2017
18 telling Mr. Phillips that her customer is complaining about the
19 consistency of the heroin. She's saying he's reporting it's
20 like clay. And he's asking about how to dry them out. And
21 she's having problems with this customer because she's not
22 getting paid and he's complaining to her about the consistency
23 of heroin that Yusef Phillips is supplying.

24 Further on in the call Phillips is giving her further
25 advice. Sort of indicative of the closer relationship that the

1 two had. He's telling him to just let them sit out. Maybe put
2 them on top of the cabinets where the high heat rises. He's
3 instructing her to give instructions to her customer on how to
4 get the heroin from a clay consistency to something that's
5 dryer and more in a brick form. And that was Mr. Phillips'
6 testimony about this call, and it's corroborated by what's
7 happening in the call itself.

8 Ms. Thompson cannot refute, based on the plain
9 language of that call, that they were talking about grams of
10 controlled substances.

11 On August 6th of 2017 Ms. Thompson is actually
12 reporting about going over to her customer's house, and it
13 appears to be, based on the texts and what we heard on the
14 wire, she just put the drugs in the cabinet and told her
15 sister. Told her sister that the drugs were in the cabinet.
16 You can use your common sense here, ladies and gentlemen, to
17 question, rightfully so, whether Ms. Thompson is supplying her
18 sister's boyfriend or husband. Someone that is related to
19 Ms. Thompson's sister is Ms. Thompson's customer.

20 We go one step further here because on August 7th of
21 2017 Ms. Thompson has another call with Mr. Phillips, and on
22 this point in time again we're back to the subject of drying
23 the heroin. And her customer, right here, the unknown male,
24 comes on and says "Yo." And Phillips then engages him in a
25 discussion about the clay-like consistency of the heroin. And

1 we further know that this is about drugs because Phillips is
2 asking him "What do you put on them?" The unknown male right
3 here is saying essentially "I cut my heroin with lactose." And
4 you heard Phillips testify, I believe, in this case that
5 lactose -- while he used Fruit Fresh to cut the heroin and cut
6 the drugs, lactose is also a common cutting agent used by
7 drug traffickers. He responds, "That's not so bad." He's
8 trying to figure out why this heroin that he supplied to
9 Ms. Thompson who then gave to her customer is like clay.

10 We also know this is about illegal activity because
11 Thompson's customer further on in this conversation is talking
12 about how he's trying to keep things tight. He's trying to
13 keep his existing client base. He doesn't want to get too
14 risky with things. And Phillips here is saying "If you take on
15 anybody new, then you're probably going on your way to prison."
16 If they were talking about legal activity, ladies and
17 gentlemen, he wouldn't be talking about the risk of going to
18 prison. There wouldn't be talk about grams. There wouldn't be
19 talk about lactose as a cutting agent. Andrea Thompson was
20 part of this call and was involved in Yusef Phillips'
21 drug-trafficking activities. It's virtually indisputable based
22 on these intercepted calls and Yusef Phillips' testimony.

23 The call returns to just Ms. Thompson and
24 Mr. Phillips. It appeared she was at her customer's house.
25 And Phillips is complaining that he needs to generate something

1 because the drugs are moving so slow and it's putting
2 Ms. Thompson behind worse and worse. And she acknowledges that
3 that's happening.

4 And in another call, again complaining about
5 Ms. Thompson's customer, he's saying "You can't be too cautious
6 to where you're not gonna make no money." In the first part of
7 my opening statement, ladies and gentlemen, I told you that
8 drug trafficking is all about the money. It's not inherently
9 fun. People do it to make money. And we're seeing that right
10 here through Yusef Phillips' conversations with Thompson trying
11 to instruct her how to make a buck trafficking drugs, through
12 his conversations with Alex Castro that were intercepted,
13 through his conversations with Dante Howard. It's always about
14 the money.

15 One of the reasons Phillips says "It's not worth it
16 if you're not making money," because when you get into a car
17 and you're traveling from A to B with drugs, you're taking a
18 chance. Salvador Cervantes learned that. And you heard him
19 testify about the prison sentence he earned for doing that.
20 It's an inherently risky endeavor. It's why they talk in code.
21 But even on Mrs. Thompson's calls they are slipping. You heard
22 about grams. You heard about lactose. You heard about prison.
23 It's not as coded as many of the other calls you see.

24 Here is further evidence that we know that
25 Ms. Thompson and Mr. Phillips had a relationship and that she

1 was aware of what was happening.

2 She was given access to the Camelot stash house.
3 Mr. Phillips testified she had a key to it. On May 3rd of 2017
4 video surveillance picks her up going into the stash house. It
5 shows Yusef Phillips going into the stash house 10 minutes
6 later. She was welcome at the brothers' home on Cascade Road.
7 She entered Camelot again as picked up on surveillance on
8 August 14th of 2017.

9 You're going to get a verdict form for Ms. Thompson.
10 We request based on this evidence that you find her guilty of
11 Count 1. If you do that, then you have to determine what drugs
12 she was responsible for. Based on the calls about clay, the
13 cutting agent of lactose, and the fact that she's supplying her
14 customer with heroin, we request that you find her guilty of
15 Count 1 because that's what the evidence shows and that she was
16 involved with heroin.

17 And then you have to decide about cocaine. And you
18 heard Mr. Phillips testify that back in 2013 she transported
19 cocaine -- or transported drugs from Chicago into Grand Rapids.
20 And you also heard the testimony that she was on the lease for
21 the stash house. The stash house contained both heroin and
22 cocaine. There's no evidence in this case to suggest that
23 Ms. Thompson did not know what was going on, ladies and
24 gentlemen. And while she may not have been a mastermind at the
25 regional level ala Yusef Phillips, she supported him, she aided

1 him, she became involved in drug trafficking herself. We
2 believe the evidence shows that she was involved with cocaine
3 as well.

4 Finally this brings us to Mr. Cox who is sitting
5 right here at the end of the defense table. He's indicted in
6 the conspiracy in Count 1, possession with intent to distribute
7 in Count 14. Which I believe if memory serves relates to
8 September 1st of 2017.

9 Again, you heard Ray Lee testify about his
10 relationship with Cox. It was an extended family relationship.
11 And that he had been supplying Mr. Cox with a half kilo to one
12 kilo of cocaine every month from 2014 until his arrest. There
13 were 10 conversations that were picked up on the wire
14 interception. Perhaps I was wrong and the day was
15 September 2nd of 2017. But we saw that there was one delivery
16 of cocaine in the Woodland Mall parking lot.

17 And you remember Mr. Lee on the phone listening to
18 the phone call going, "No, I'm at K2. K2. K2." Trying to
19 direct Mr. Cox to where he was at. We see that conversation
20 right here. "Go to where it says J1 at." It's at the mall.
21 It's the side of the mall where the Game Stop is at. Finally
22 J1 or J2. Okay. Lee says, "I mean K." It's a little Keystone
23 cop-ish almost listening to that conversation wondering if they
24 were ever going to connect, but it was clear that they wanted
25 to connect because they didn't give up on it.

1 And you finally saw Mr. Cox drive up in his white SUV
2 on that Woodland Mall surveillance video, park, meet with
3 Ray Lee. And Ray Lee testified that he supplied Mr. Cox with
4 cocaine on that date in that car.

5 So again, that's going to bring you to the
6 verdict form based on Ray Lee's testimony and the video
7 surveillance from September of 2017 capturing the deal in the
8 Woodland Mall parking lot. I submit that Mr. Cox is guilty of
9 the conspiracy, because as Ray Lee testified, that was not a
10 one-time event. What Ray Lee was testifying about was
11 corroborated by the wire interceptions and the video
12 surveillance.

13 And then if you find Mr. Cox guilty of Count 1, you
14 also have to consider again drug quantity that's reasonably
15 foreseeable and attributable to him. And, again, if Mr. Lee is
16 supplying Mr. Cox a half kilogram as a conservative amount
17 every month, we get to 5,000 grams in 10 months. And Mr. Lee
18 testified that he was supplying Mr. Cox consistently from 2014
19 all the way up until the takedown in 2017.

20 You then have to consider Count 14, which again is
21 the substantive charge which we just showed you through the
22 wire interceptions and the video surveillance. And based on
23 the quantity again that Mr. Lee testified to for that
24 particular date, he testified that he supplied Mr. Cox with
25 more than 500 grams of cocaine, so we would ask that you return

1 a finding that he was responsible for 500 more -- or more grams
2 on September 2nd of 2017 alone.

3 Ladies and gentlemen, as I began my closing here, I
4 mentioned that this was a chain conspiracy, that this involved
5 the spectrum of drug trafficking. I submit to you that the
6 fact that one defendant may have 46 interceptions, one
7 defendant may have 10 isn't necessarily dispositive of whether
8 the defendant that only has 10 interceptions is guilty or not.
9 You have to consider the substance of the evidence that was
10 presented to you in light of your common sense and
11 understanding and consider whether any of these deals with all
12 of these defendants had anything whatsoever to do with anything
13 other than drugs.

14 Based on the testimony that you've heard from the six
15 coconspirators and the wire interceptions and the electronic
16 surveillance which corroborate that very testimony, I ask that
17 you return verdicts against all defendants in this case that
18 are consistent with that evidence which is guilty as charged.
19 Thank you.

20 *THE COURT:* All right. Thank you, Mr. Fauson. So
21 we've been going about two hours and we'll take a break. Let's
22 try to keep this one to about 15 minutes, and then we'll pick
23 up with the defense closings at 11:45, and then the break after
24 that will be a little longer.

25 *(Jury exited the courtroom at 11:38 a.m.)*

1 *THE COURT:* All right. 15 minutes.

2 *(Recess taken at 11:39 a.m.)*

3 *(Jury entered the courtroom at 11:55 a.m.)*

4 *THE COURT:* We'll go over to the defense closing
5 starting with Mr. Lombard. And do you plan to use anything on
6 the screen?

7 *MR. LOMBARD:* No, Your Honor.

8 *THE COURT:* Okay. Whenever you're ready.

9 *MR. LOMBARD:* Thank you.

10 *THE COURT:* If you would prefer to move the podium,
11 it should orient however you want.

12 *MR. LOMBARD:* That's a little better. Thank you.
13 And may it please the Court. Ladies and gentlemen of the jury,
14 there's one thing that we do not agree with, Mr. Castro does
15 not agree with about what government counsel just said, and
16 that is that telephone interceptions do not lie. Mr. Castro
17 agrees with that. What we disagree is who has -- who is on the
18 other line of the telephone interception. And the only person
19 or persons who can identify the source of supply are
20 Mr. Cervantes, if you believe him, and Mr. Phillips, if you
21 believe him. There's no documentary evidence that supports
22 them. They corroborate one another.

23 If you remember, when I first came up here I said the
24 truth does not change and lies never stay the same. And in
25 this case Yusef Phillips, Salvador Cervantes, and Ray Lee are

1 not believable, they are not trustworthy, they are not
2 credible.

3 Now, before I get into the evidence, I want to talk
4 briefly about the standard. We talked about it. The judge
5 read it to you this morning. But the government has the
6 burden, not Mr. Castro. The government. And it's their
7 burden. It's not ours. We can sit here and not say a word. I
8 don't have to ask a single question. It's their burden. And
9 it's a serious burden. It's so serious that it's the Drug
10 Enforcement Agency, the United States of America, there's
11 helicopters, GPS, there's a lot of people, fifteen law
12 enforcement agencies on this side in the Western District of
13 Michigan that participated in this investigation. That's their
14 burden. Not Mr. Castro's. So if you have one question
15 whatsoever, any question about the evidence you have received,
16 you don't look to us, you look to the government, because
17 that's their burden. That's their job to explain the evidence.

18 If you have a question about why someone didn't
19 testify or you wanted to hear more from a certain witness, if
20 you wanted to see a piece of information or evidence, if you
21 have questions about why one transcript says this and another
22 number says this, if you want see toll analysis records, if you
23 want to see Mr. Castro's name on a single piece of paper, you
24 look at them, not Mr. Castro.

25 And what is that burden? Beyond a reasonable doubt.

1 It's the highest standard we have. It's not clear and
2 convincing. It's not it's likely, it's probable Mr. Castro is
3 the source of supply. No, it's beyond a reasonable doubt. So
4 if you have any question in this trial about what took place or
5 what you heard, you look to them, and they have to convince you
6 that Mr. Castro is that source of supply beyond reasonable
7 doubt.

8 And I'm going to tell you why he is not the source of
9 supply. The most basic fact that Yusef Phillips,
10 Salvador Cervantes, and Ray Lee have to tell you is how the
11 drugs came, if they came from California, to Grand Rapids. And
12 I crossed them, and I hope you paid attention, I tried to let
13 you know when I was going to get into something serious, but
14 the first question is: When did these drugs start coming? I
15 asked that each three, and we got different answers from each
16 of them.

17 From Mr. Cervantes the drugs started coming in 2014.
18 Mr. Lee, the drugs started coming in -- began 2014.
19 Yusef Phillips, they began September of 2013. Remember me
20 going into 2013, September or October, and then Mr. Lee says,
21 "Oh, they started in September of 2013 and then a month later
22 came again." That's the first discrepancy. And it gets
23 bigger. I'm going to get you there.

24 Mr. Cervantes says "The first load I ever delivered
25 was 10 kilos of cocaine and a hundred pounds of marijuana."

1 That's not what Mr. Phillips says. That's not what Mr. Lee
2 says. Remember, if you believe Mr. Lee and Mr. Phillips, they
3 were delivering -- getting drugs in Chicago, heroin, and they
4 wanted a better price for heroin. Not cocaine and marijuana.

5 Mr. Phillips testifies that the first deal was for
6 two kilos of heroin. Mr. Lee testifies he was receiving 12 to
7 15 kilos of heroin. That's why those questions were asked. I
8 tried to ask the same questions to each of them. Because
9 that's the way we can see when people are being truthful. You
10 tell your version of events, we'll ask someone else. Because
11 supposedly Mr. Cervantes, Mr. Lee, and Mr. Phillips never spoke
12 and they shouldn't know what one another is saying in court.
13 That's why those questions were asked that way.

14 So then Mr. Cervantes: "Did you ever drive a car
15 hauler? Did you ever drive your personal car? Did you ever
16 drive a rental car? No, I always drove a semi truck." So
17 Mr. Cervantes started delivering drugs in a semi truck in 2014
18 if you believe him.

19 Let's go to Mr. Phillips. Rental cars and personal
20 cars is how the drugs came from 2013 to 2015. That's his
21 testimony. I asked him: "So things came" -- I asked him a
22 question -- and your memory will serve correctly, but this is
23 how I remember the evidence, or how Mr. Castro remembers the
24 evidence -- I questioned him: "Mr. Phillips, you began
25 delivering drugs, right? And they came in car haulers? No.

1 They came in rental cars? Yes. You weren't sure if they were
2 personal cars? Correct. And that stayed the same, that
3 method, from 2013 to 2015? Yes."

4 Okay. Well, that's not consistent with what
5 Mr. Cervantes says. We don't hear any other testimony about a
6 secondary or another source of supply from California.
7 Mr. Cervantes doesn't say he's the source and there's another
8 person from the source of supply. Mr. Phillips doesn't say
9 there's another source of supply from California.

10 So then we ask Mr. Lee, what's his version of how the
11 drugs got here. He says they came in a car hauler beginning in
12 2014. So even if you tried to discredit one of them and say
13 let's go with Mr. Cervantes, Mr. Cervantes says "I began in
14 2014. Only drove a semi truck. And I drove, my first delivery
15 was cocaine and marijuana." Mr. Lee says, "Oh, we began in
16 2014. It was a car hauler." There's a big difference, ladies
17 and gentlemen, between a car hauler and a semi truck.

18 Mr. Cervantes says "I always drove a legitimate load.
19 Frozen produce, daily produce, stuff like that." A car hauler
20 hauls cars. We've seen them on the freeway that are stacked
21 with cars. Mr. Cervantes says "I've never driven a car hauler.
22 Never driven a rental car."

23 And then in 2016 Yusef Phillips says the cars
24 started coming -- the drugs started coming on a car hauler.
25 Mr. Cervantes says he didn't deliver any drugs in 2016.

1 Mr. Cervantes says "From January 2016 to December of 2016 I did
2 not drive any drugs into Grand Rapids." That's 12 months. How
3 does that work when Mr. Phillips is telling you "My source of
4 supply is delivering through 2016 on a car hauler"? And then
5 Mr. Lee says that the car hauler was in 2014, not 2016. And
6 Mr. Phillips -- I mean -- excuse me -- Mr. Lee goes -- if you
7 remember when I started questioning him -- well, mid-October
8 2015 through 2017 the drugs were coming on a semi truck.
9 Something is wrong. You all were here, we're all here, you're
10 the triers, you're the jury. You get to look and see how these
11 individuals testified. You get to see how they -- their
12 mannerisms were. And they don't know what the other person
13 said supposedly. But we caught them in this. These are lies,
14 ladies and gentlemen, and you can't trust them.

15 Salvador Cervantes says "I stopped delivering in 2015
16 because there was a seizure of money, so I wasn't able to
17 deliver any more drugs from mid 2015 to October 2015" he
18 testified "all the way through 2016."

19 Phillips and Lee said, "Oh, no, the drugs were
20 coming." Phillips says on a semi -- on a car hauler in 2016
21 and Lee says they were coming on a semi truck from 2015 -- mid
22 2015 to 2017.

23 Then Cervantes says "I started back in March of
24 2017." We know from the Betty Ford records that Mr. Castro was
25 checked into Betty Ford. How does that work? You're in rehab

1 and you're still conducting your supposed drug transactions?

2 Where are the calls for that?

3 Phillips says "I only saw Mr. Cervantes on two
4 occasions." Remember when I questioned him about it? He said,
5 "Oh, I don't know. I saw him more than that." I said, "Well,
6 sir, do you remember testifying from the grand jury when you
7 raised your right hand and you swore to tell the truth, the
8 whole truth, and nothing but the truth so help you God, and you
9 gave a testimony that was much closer in time of the events
10 than today?" And he read it and he goes, "Oh, yeah, I did, I
11 said I saw Mr. Cervantes on two occasions." Two times.

12 Mr. Cervantes says "I was there five times in 2017."
13 Mr. Lee says "It's always been the same driver. I only saw
14 Mr. Raya, his passenger, one time." But Mr. Cervantes says "I
15 had a copilot, my copartner, my cotransporter of narcotics
16 across the country, that was Mr. Raya. He came with me every
17 time." So Mr. Cervantes has at least five times him and
18 Mr. Raya have been in Grand Rapids, and Mr. Lee says "I only
19 saw Mr. Raya one time."

20 I told you from the very beginning that this evidence
21 that we were going to present to you would show you these three
22 could not be trusted, they are not reliable, and they are not
23 credible. That is this case.

24 And I'm going to get to you -- I'm going to get in a
25 moment to Alexis Guidice, the special agent in this case, and

1 how she tries to support their testimony. But let's talk
2 briefly -- and, ladies and gentlemen, like I said, telephone
3 interceptions don't lie. There's narcotic traffic talk it
4 appears on those interceptions between the source of supply and
5 Yusef Phillips. But without any proof, you're left to rely on
6 Yusef Phillips. And without -- and all Yusef Phillips does is
7 corroborate Salvador Cervantes, until they actually get into
8 the details and I start questioning about the weeds of this
9 story they have concocted.

10 This is Government's Exhibit 7A. I've put tape on
11 here because I didn't want you to rush to judgment like the
12 government has done. What you have is Yusef Phillips who has
13 admitted to a crime, calling numbers. The government wants you
14 to believe that these numbers are Mr. Castro's. The only
15 evidence that shows these numbers belong to Mr. Castro are
16 Yusef Phillips and Cervantes, Salvador Cervantes, and Ray Lee.
17 The only evidence.

18 Where is the subscription notice? Where is the
19 surveillance? Where is the documentary evidence so we can say
20 "Okay, look, I don't really like the way you testified. I
21 think you're lying. I think you're not telling the truth.
22 You're actually contradicting the other person's story. Let
23 me -- let me find something that I can hold onto and say I feel
24 confident that this person is the source of supply beyond a
25 reasonable doubt. Where is that evidence?

1 So let's talk about Yusef Phillips. Why you can't
2 trust Yusef Phillips. Yusef Phillips has been playing the
3 criminal justice system since 1998. He was looking at a
4 27-year sentence and he worked it down to a little over
5 11 years I believe it was. Now he's looking at life in prison.
6 Mandatory life in prison. And what does he get? He gets a
7 25-year sentence with the option of the government making a
8 recommendation to lower his sentence. That's why you have to
9 look at him and think "Something is not right here. This guy
10 knows too much." He knows more about the criminal justice
11 system than you. He knows how this system works. "The more
12 people I can give up, the more names that get thrown in the
13 hat, the less time I'm going to do. And I don't want to spend
14 the rest of my life in prison." Who does? But he had it
15 planned out.

16 Not only that, ladies and gentlemen, it wasn't until
17 when I started cross-examining about who he was and what he
18 stood for and the principles he lived by, it was when we played
19 the video, the recording. And you'll have that back there,
20 Defense Exhibit 2, where he's talking to Demetrius Gaines about
21 how he had all this planned out. About how he's going to
22 cooperate, put some names in there, and then go to the Muslims
23 and hide and protect himself. That was his plan. He knew,
24 because he knew enough about the system, that if he ever got
25 caught -- let me just tell you -- excuse me, let me get some

1 water. He knows how the system works. When he got out of
2 prison, he went right back to drug dealing. Within a year.

3 He knew, based on his experience, that he was facing
4 life in prison when he was receiving drugs from the source of
5 supply. He knew the exposure he had. He had a get-out-of-jail
6 card. He knew how to play that.

7 Listen, Mr. Tyson, Joe Tyson, there's a conversation
8 where he's playing -- remember I asked him a question about
9 "Didn't you have Mr. Tyson working as a confidential informant
10 and you were using Mr. Tyson to set up someone else?" This is
11 a guy who plays both sides. You cannot trust Yusef Phillips.
12 Certainly not beyond reasonable doubt.

13 Remember when he talked about the guns? He said,
14 "Oh, I don't use violence. I'm not a violent person. I sell
15 drugs, large quantities of drugs" he admitted to "with just a
16 shake of a hand. People pay me back because I'm a nice guy."
17 Stuff like that is just not credible. We don't ask you to
18 check your common sense when you walk in here. Drug dealers
19 have to have respect. If you don't pay your drug dealers, then
20 how are you going to be a drug dealer? Oh, he's just a nice
21 guy. Don't worry about paying him back. We can just use his
22 drugs. It doesn't work like that. That's why we have extra
23 penalties for people who plead guilty using firearms. Because
24 we know it comes -- drug dealing comes with that.

25 Mr. Cervantes. Again, your common sense, ladies and

1 gentlemen. I just -- "Mr. Castro walked up to me in a Hooter's
2 and asked me if I wanted to transport drugs"? Did it really go
3 down like that? Someone just walked up to you that you have
4 never met before and said, Hey, would you like to sacrifice
5 your life and freedom and never see your family again and get
6 paid a thousand dollars a kilo? That's the story that was
7 presented. I didn't testify to that. I didn't bring that out.

8 If you have questions about that kind of testimony
9 just not ringing true, look to the government counsel. Don't
10 look to Mr. Castro. That's not our job. But I submit to you
11 that's not credible. I submit to you that's a reason to doubt
12 Mr. Castro's case -- or the government's case against
13 Mr. Castro. There's no corroboration for Mr. Cervantes'
14 testimony. There's no corroboration for that.

15 I submit to you that Yusef Phillips and Cervantes met
16 several times, probably at least 20 times. They met, they
17 started -- depending on who you believe -- 2013 or 2014 up
18 through 2017 they met multiple times. No one was there when
19 they met. No one knows what was said between the two of them.
20 There's no recording of it. I submit to you that's where
21 Mr. Phillips put the name Alex Castro in Mr. Cervantes' head.
22 That's my inference. You can choose your own. And Mr. Castro
23 doesn't have to present an inference of what this is. It's the
24 government's job. But that to me, that's what this sounds
25 like. When I look at all the evidence, when I look at these

1 not believable, not credible cooperators on how this story
2 unfolds.

3 But here is the real truth, I submit to you, when it
4 comes to Mr. Cervantes. You're going to have Defense Exhibit 6
5 back there with you. This is the flip phone that he said was
6 his phone. This phone here -- and you can look -- go to
7 pages 3 -- there's only -- there's 85 pages, but most of it is
8 irrelevant. This is the Cellebrite analysis of this phone.
9 And if you look, pages 3 through 10 basically starts off with
10 the calls and it goes to the text messages. And, ladies and
11 gentlemen, this tells you that Mr. Cervantes -- and he stepped
12 away from it and said, "I don't know the phone number. Maybe
13 it's my partner's phone that's in the cab." But either way
14 it's not credible. You both are driving drugs across the
15 country. You don't know what's going on? You don't know
16 you're going to Ohio? It says right here and here. It gives
17 the address in Ohio, hey, from the same number, "Tell me I can
18 come see you and pick up the bags." Remember I asked him to
19 read that Spanish to us and tell us what it said. This is what
20 we call proof, this is what we call documentary evidence, this
21 is what we call corroborating evidence, and it doesn't
22 corroborate the government's version. And they didn't present
23 this to you. I presented this to you. Mr. Castro presented
24 this to you. I submit to you the reason they didn't present it
25 to you is because it gives you reason to doubt Mr. Cervantes.

1 It talks about -- if you look -- I'm not sure if I
2 did it when I was asking him questions about it -- the text
3 messages and phone calls are on the date of the delivery or the
4 day before the delivery in Grand Rapids on September 3rd. And
5 we know that the numbers that are being called on here are from
6 Mexico. And we know when they were stopped there was about a
7 million dollars worth of drugs in that truck. These guys are
8 up to something else, and they are not telling us the whole
9 truth. They are not credible. Why aren't they telling us the
10 truth? We know Mr. Raya, his partner, his uncle was kidnapped.
11 There's a lot more to this story, ladies and gentlemen, and
12 you're not being told the whole story, and that's a reason to
13 doubt right there.

14 But take this back and look at these numbers, look at
15 the times, and you will see what I'm telling you. It's not my
16 word. It's the document's word.

17 Remember I asked him, "Sir, Mr. Cervantes, have you
18 ever traveled to Mexico with your truck?" "No."

19 "Mr. Cervantes, are you sure you have never traveled
20 with your truck in Mexico?" "No. No. No." "Okay. I have no
21 further questions for you, then, on that."

22 But I called then Special Agent Guidice who talked
23 about a meeting where Mr. Cervantes was there, in his job of
24 cooperating, and he talked about driving his truck in Mexico.
25 Why did he lie about that? Why the inconsistent statement?

1 Another reason to doubt, ladies and gentlemen.

2 Mr. Lee. I didn't spend a lot of time with Mr. Lee.
3 He's an admitted gang member. He learned from his brother the
4 way things go. Remember when he was arrested, he didn't want
5 to say anything. "Nope, I've got nothin' to say. I've got to
6 check back with my bro, see what he wants to do, and then I'll
7 do what he says." That's what he is. He waited to hear from
8 his brother to see what he had to say. Everything flows from
9 Yusef Phillips, ladies and gentlemen. The government's case
10 against Mr. Castro flows from Yusef Phillips. You have to
11 believe Yusef Phillips if you want to bring a verdict beyond a
12 reasonable doubt against Mr. Castro.

13 Mr. Lee had a picture of Mr. Castro and him on his
14 phone. Ladies and gentlemen, remember I asked him "Do you have
15 a work phone and a personal phone?" "Yes." "That picture of
16 Mr. Castro and you, that's on your personal phone, right?"
17 "Yes, it is, it's on my personal phone." "You have a separate
18 phone for drug dealing, right?" "Right."

19 Just like I asked Mr. Phillips, "You went to
20 California, right?" "Yep." "And did you talk drug dealing in
21 California?" "No, purely social." That was both of them.
22 Purely social. No drug dealing. That doesn't -- okay. So you
23 have a picture of someone that's on your personal phone and you
24 went to California for social reasons and the government wants
25 you to draw that inference. And I'm telling you that's not

1 beyond reasonable doubt, ladies and gentlemen. It's questions.

2 What did Mr. Lee -- what did Mr. Lee say when they
3 asked about "What did you talk to your brother about when you
4 went back to Newaygo jail?" Mr. Lee said, "I did what I was
5 supposed to do and everything is fine."

6 If you're testifying in a criminal case as a
7 cooperating witness and someone says "How did it go?" "I told
8 the truth." That's what you're supposed to do. You don't say
9 "I did what I was supposed to do." What you were supposed to
10 do was what you and your brother set up. I submit to you,
11 ladies and gentlemen, they are telling their story back and
12 forth through family members. And I'm going to get to the
13 Newaygo jail in a second. But they are communicating with each
14 other. How do you think Mr. Lee and Mr. Phillips pled guilty
15 and cooperated? They did it knowing one was going to do the
16 other. In fact, they were here in the same courtroom on the
17 same day to plead guilty. So I don't submit -- I submit to you
18 that you cannot rely on their testimony.

19 So let's get to the case agent,
20 Special Agent Guidice. She's been a DEA agent for three years.
21 I think at the time this case started she had just got on the
22 job maybe a year and a half, two years. She was an air marshal
23 before. She had some training which took some time. Then she
24 lands in Grand Rapids and she gets this case. What it sounds
25 like -- and I'm not from Grand Rapids as you obviously know --

1 it sounds like a very big case. Fifteen law enforcement
2 agencies. Helicopters. GPSs. Pole cameras. Multiyear
3 investigation. Sounds huge. And here it is it lands in her
4 lap as the case agent.

5 I submit to you, ladies and gentlemen, she got used
6 and manipulated by Yusef Phillips and Cervantes. That's what I
7 think happened here. She went along with them. She's an
8 investigator. She investigates drug crimes. These guys on the
9 other side, they are playing for keeps. They are playing for
10 their lives. That's what they're doing. Yusef Phillips has
11 been playing this system since 1998, and she just came here
12 from the air marshals and just started dealing with these guys.
13 I think she got outfoxed.

14 Think back to your profession or what you do, when
15 you started something, in two, three years, and then think
16 back -- and then plus 15 years of experience how you're
17 starting to change and look at things. How you evaluate
18 people. I submit to you in another 15 years it won't be like
19 this. Agent Giudice will do it a lot differently.

20 What would she do? She wouldn't trust Yusef Phillips
21 and Salvador Cervantes and Ray Lee. The government knew that
22 you wouldn't trust Salvador Cervantes, Ray Lee, and
23 Yusef Phillips. What did they do? They had Agent Giudice
24 listen to a sample call of Mr. Castro's voice. And then said,
25 "Listen to this voice and go back and compare it to the wiretap

1 source of supply and tell us if that's Alex Castro." That's
2 what she testified to. And the reason the government had her
3 do that, because they figured you, ladies and gentlemen, are
4 going to trust a sworn DEA agent over some lying criminals.
5 Right? But Agent Giudice, she made a mistake. I don't know if
6 it was too much pressure or too much ambition or what it was,
7 but she didn't. She took their word. She didn't get an
8 expert. She didn't use video -- or audio software.

9 It seems like a while ago when I first asked those
10 questions, she was the first witness, about her experience in
11 listening to voices and detecting voices and whether she
12 listened to consonants or vowels, whether or not she compared
13 the sample on the source of supply to any other voices. Big
14 Boy, Fat Boy, Heavy, Camilla Alvarez. Did she have samples of
15 that to compare it against the source of supply? No. They put
16 her in a difficult position. Of course, she's going to say
17 it's Mr. Castro. Mr. Cervantes and Mr. Phillips already told
18 her who it was. How could she now, after the case has been
19 indicted, after we're getting ready for trial, and then put her
20 in that position? I tell you, ladies and gentlemen, I submit
21 to you that that doesn't ring true. I think she got
22 manipulated by these gentlemen.

23 She didn't consult with an expert. The DEA, ladies
24 and gentlemen. They are going for, quote, the source of
25 supply. The most important person in the case. And all she

1 has to do with all the resources they have is submit it
2 somewhere who's a professional. Or compare it to someone
3 else's voice. So you're not just confirming what your lying
4 cooperators are saying, or what your -- I won't say lying
5 because you make that determination, but I'll say certainly it
6 raises suspicion. They have everything to gain from putting
7 someone else's name out there. If you have questions about
8 that, if you have problems the way that was done, you don't
9 look to Mr. Castro, you look to the government.

10 So let's talk about the mistakes in the case. You're
11 going to have Government Exhibit 140. This is an exhibit that
12 talks about a phone number that Yusef Phillips had. 8055 is
13 the end of it. And this exhibit, there are pictures sent, a
14 movie trailer is sent from this phone and I believe the picture
15 of Ray Lee at the trailer -- at the paintball. That's this
16 phone number, okay? And the government exhibit, the exhibit
17 that they were going to give to you to rely on to try to prove
18 my client guilty beyond a reasonable doubt, this exhibit had a
19 different phone number on it. It has a number up here. You'll
20 see it. You'll have it. They tried to clear it up, but they
21 have it. It says (310) 299-6248. That number, ladies and
22 gentlemen, it's important that number, because that number is
23 the number that's talking about the September 3rd delivery. So
24 if you look at all the texts and phone calls going back and
25 forth about the September 3rd delivery in Grand Rapids, it's

1 that 310 number. So the government had all the interests in
2 trying to put that number to the number that had Mr. Castro in
3 pictures and in video. But that was wrong. That was wrong,
4 ladies and gentlemen.

5 Was it ambitious? Was there ambition clouding their
6 judgment? Did they want to convict Mr. Castro so desperately
7 that they put the wrong evidence before you? Or was it a
8 mistake? Either way, ladies and gentlemen, it raises suspicion
9 into the integrity of this case. It should give you pause when
10 you look at every piece of evidence. What was caused? What
11 was rushed? What decisions were rushed? All of these in
12 Exhibit 148 came from a 909 number. Where's the records for
13 909? I want to know where the records -- you say that's
14 Mr. Castro's phone. Where are the records for it? We don't
15 have them. And we don't have them because he's not guilty.
16 He's not the source of supply.

17 The other number you're going to rely on -- they are
18 going to rely on. When I get up, Mr. Baker is going to talk,
19 and he's going to be a little bit more pointed because the
20 government has the burden. And I'm going to talk to you about
21 another number, Mr. Castro's number, (424) 303-3174. It's the
22 text messages. The only way you know any of this belongs to
23 Mr. Castro is because Mr. Cervantes says that's Mr. Castro's
24 number. So you have to believe Mr. Cervantes. You have to
25 believe when he tells you when he started delivering drugs that

1 he did not come in a car hauler, that he began in 2014, that he
2 didn't deliver any heroin to begin with. You have to believe
3 him. We have to believe Phillips who contradicts him.

4 And then, ladies and gentlemen, there's another
5 mistake here. And I don't know if it's a mistake or if there's
6 another number. But if you look at -- and you're going to have
7 all the text messages back here -- (424) 283-2271. And I'm
8 focusing on these. I know it seems like a lot of information.
9 It is a lot of information. But remember the 909 number.
10 Remember that number. And remember this number, the last two
11 -- the last four digits, 2271.

12 Remember, I asked the DEA analyst "Did you ever get
13 toll records for a 2217 number?" There is a stipulation we
14 entered into with the government about phone records. It's a
15 2217, not a 2271. I'm not sure if there's a 2271 and a 2217
16 number, but it's important to know, ladies and gentlemen, when
17 there's other evidence out there that's not being explained to
18 you. It's not our job to explain the evidence. It's not our
19 job for the evidence to make sense to you. It's their job, and
20 they have got two different numbers on the evidence they are
21 submitting to you. I don't know if that's shoddy
22 investigation. I don't know if they are just overwhelmed with
23 the amount of information they have. Whatever it is, it's
24 their burden. And if you have questions, you ask them about
25 it. Why is it that you're giving me two different numbers?

1 Where is this number? Who is it tied to? Those are all
2 legitimate questions for you to ask.

3 You also see 1266 -- 126 -- 126A up there. We talked
4 a lot about it. If you believe these guys, \$60,000 a kilo, if
5 you count these up, that's over a million dollars. Just over a
6 million dollars of drugs. It says, "Torres, Philadelphia."
7 The ones that say "Philadelphia" have "Philadelphia" written on
8 them. They were going other places. Cervantes doesn't want to
9 say that. He already knows that Raya's cousin got kidnapped in
10 Mexico. He's trying to skate through and just stick with the
11 story that Yusef Phillips told him. Reasons to doubt. These
12 are reasons I have. You all can have different reasons, but
13 these are ones that I've seen, I submit to you are reasons why
14 Mr. Castro is not guilty.

15 There's no surveillance of Mr. Castro. No photos of
16 him loading drugs, receiving money. The bill of sale for the
17 cars and the trucks, where is that? I mean, it's great for
18 someone to go say something. It's different to have proof,
19 corroboration. Where is that evidence? Phone records with his
20 name in it. Everyone has a phone number. If you believe the
21 government, they all have multiple phones. Okay, drug dealers
22 have multiple phones. But certainly you also have a regular
23 phone. Where is that phone? Did you hear any testimony about,
24 "Oh, we did find Mr. Castro has a regular number. This is his
25 number. And we didn't find any connection to it." Did they

1 even try to find if Mr. Castro had a regular number? It's not
2 our job, ladies and gentlemen. They are presenting this case.

3 No houses in his name. No money. No one saw him
4 with drugs. This also puzzled me. I think this is reason to
5 doubt. And you're the ultimate trier of fact here, but you run
6 a drug business, you don't want to be known, you're supposed to
7 remain as anonymous as possible, everything is going well, and
8 then you go out and fly out to California to meet the person
9 and introduce yourself and bring yourself closer together when
10 there's no reason to do that?

11 We heard testimony from Mr. Lee and Mr. Phillips all
12 about how to stay anonymous and how to distance yourself. The
13 reason they went out to California had nothing to do with
14 drugs.

15 How about the Betty Ford stuff? Did you hear any
16 testimony that the payments for Betty Ford were for drug
17 dealing? Yusef Phillips didn't say "I had Andrea Thompson send
18 money to Betty Ford to pay for drugs that Mr. Castro owed me."
19 You didn't hear that. You didn't hear it because it didn't
20 happen.

21 Briefly -- I'm almost done, ladies and gentlemen --
22 the money -- there's a lot of talk about the money that
23 Cervantes, Phillips, and Lee earned in this case. Cervantes
24 says he earned roughly \$500,000 for transporting drugs.
25 Doesn't have any money. Mr. Phillips and Mr. Lee had to have

1 made way more than that if they were doing it for three, four
2 years. They had to make millions. Where is that money?
3 Mr. Lee and Mr. Phillips' mother has nine homes working as a
4 patient advocate in a hospital. The reason why that's
5 important is because it goes to show you how deceptive these
6 men are. How their honesty and their integrity is
7 questionable. And what they tell you on the stand you have to
8 look at carefully. You don't accept what they say. You should
9 not accept what they say I submit to you.

10 Newaygo jail. We know that Yusef Phillips, Ray Lee,
11 and Mr. Cervantes are all in general population at Newaygo
12 jail. We know that there's a way to communicate with one
13 another. Etrevion Murphy got up here and told you that.
14 "Yeah, Yusef Phillips told me" to put Dante Howard's name in
15 his testimony. Now, I don't know what happened over there, and
16 I don't know, but I'm telling you from our theory, we certainly
17 believe Yusef Phillips put Mr. Castro's name out there. We
18 know how that works now.

19 The photographs that were sent from the 909 number.
20 We know, ladies and gentlemen, you all have cell phones.
21 Probably most of you have a smartphone of some sort. We don't
22 know where that 909 number comes from. We don't know who owns
23 that 909 number. We know the photos that are on
24 Yusef Phillips' phone, the five people, and we know that the
25 people on the boat, there's another gentleman there, right?

1 There could be any reason we know that those numbers are sent
2 from other people. If the government says to you, "Listen,
3 look at these photos. These photos tell you what? They tell
4 you that they knew each other." We don't dispute that. We're
5 here to talk about source of supply.

6 Ask the government, where is the subscriber
7 information for the 909 number? Where is that? This is my
8 inference, and you have -- you're the trier of facts as I said,
9 but this is, I submit, what the evidence shows to you:

10 Yusef Phillips and Ray Lee dealt drugs. They dealt drugs, and
11 their source of supply was from Chicago. They had a source of
12 supply, multiple sources of supply. And they wanted to grow
13 bigger. Remember, Mr. Phillips or Mr. Lee said that
14 Camilla Alvarez said, "Hey, you guys are working too hard" --
15 or maybe it was Fat Boy or Heavy -- "You guys are working too
16 hard with this marijuana business. Step up your game and go
17 with the heroin game." So Camilla Alvarez said, "Hey, I've got
18 people in Mexico." That's what I've got. And Phillips tells
19 you he's from -- the Sinaloa cartel wanted him to move to
20 Mexico. And what happens next? Ray Lee gets on a plane and
21 goes to Guadalajara in 2014. And who does he take with him?
22 He called him Mikey, Michael Gould. Remember, I asked
23 Detective -- or Special Agent Guidice about the travel records
24 she investigated. And Michael Gould and Ray Lee traveled to
25 San Diego, and Ray Lee told you he crossed the border at

1 San Diego and he went to Guadalajara? That was there to get
2 the source of supply. That's where the deal was made. That's
3 what I submit to you happened.

4 I submit to you that Salvador Cervantes works for
5 those people. Salvador Cervantes drives his truck to Mexico to
6 pick up drugs. He travels with the drugs here to Grand Rapids.
7 They travel to Ohio. They travel to Indiana. They travel to
8 Grand Rapids. And over the course of that time Yusef Phillips
9 and Salvador Cervantes made a pact and that pact was if
10 something goes down, we need someone to be the fall guy. And
11 that's Mr. Castro. That's what they said.

12 Now, that's my interpretation. You could have a
13 different interpretation. And it's not our job to give you an
14 interpretation. That's just the questions we were asking to
15 see really what happened here. Our job is to sit here and test
16 the evidence. Their job is to prove Mr. Castro is guilty
17 beyond a reasonable doubt. And they can't do it in this case
18 because they relied on the informants, and
19 Special Agent Guidice didn't do the necessary work to
20 corroborate their story.

21 Now I'm going to sit down, and when I do, and after
22 all the other defense lawyers have spoken, Mr. Baker is going
23 to get up here. He has that right because it's his burden, the
24 government's burden. He's going to say a lot of things to try
25 to answer some of the things I've raised before you. But you

1 can be my voice. You can be Mr. Castro's voice here and in the
2 jury room. When they are asking questions, you can ask why
3 should I trust Yusef Phillips? What piece of paper can I rely
4 on that doesn't change over time? Why is it that
5 Mr. Cervantes', Mr. Phillips', and Mr. Lee's story changes on
6 the delivery of the drugs? Why isn't there any piece of
7 corroborating evidence for the sale of a car or the sale of a
8 truck? And, ladies and gentlemen, I submit to you that there
9 isn't that type of corroborating evidence because Mr. Castro is
10 not guilty of conspiracy to distribute narcotics. Thank you.

11 *THE COURT:* Thank you, Mr. Lombard.

12 We'll go next to Mr. Phelan on behalf of Mr. Nelson.

13 And, Mr. Phelan, will you be using any of the
14 projection?

15 *MR. PHELAN:* No, thank you, Your Honor.

16 *THE COURT:* All right. Whenever you're ready.

17 *MR. PHELAN:* Thank you. May it please the Court.

18 Good afternoon, ladies and gentlemen. The first
19 thing I want to do is I want to thank you on behalf of my
20 client for sitting as jurors in this case. You know, we ask a
21 lot of you. We ask your time. That's the most important, I
22 suppose. And you've had to make difficult decisions maybe at
23 your job, home, school, whatever, and for that I thank you very
24 much on behalf of my client, his family, and myself.

25 But I hope you know when you're done -- and no matter

1 what your verdict is -- I hope you realize you did a good
2 thing. That really what you're -- that this process that we're
3 going through now in this beautiful courtroom before
4 Judge Jonker, very few countries, if any, in this world do
5 exactly what we do in this case -- in this process, and for
6 that I thank you very much.

7 Now, after hearing the prosecutor's address to you,
8 you're probably thinking "Why are we even here?" I mean, if
9 the prosecutor is correct, this is an open-and-shut case,
10 right? This is an open-and-shut case. Forget it. But a wise
11 person knows there's two sides to every story. I mean,
12 King Solomon would have given the baby to the wrong woman if
13 King Solomon had listened to the thief's story. But
14 King Solomon listened to both sides of the story.

15 Now I want to get into, ladies and gentlemen,
16 reasonable doubt. The judge has read to you what reasonable
17 doubt is. And let me read that to you again. Proof beyond a
18 reasonable doubt means proof which is so convincing that you
19 would not hesitate to rely on it in making the most important
20 decisions in your life.

21 In other words, ladies and gentlemen, reasonable
22 doubt is that which would cause you to hesitate in making a
23 most important decision in your life. And I'll talk about that
24 a little bit later on. It's that hesitation, if you hesitate
25 for a moment, that's reasonable doubt.

1 Now I'd like to -- and what I've done, ladies and
2 gentlemen, is I divided the case against Michael Nelson into
3 three areas. Three areas of reasonable doubt. Each one of
4 which I would respectfully submit to you is enough to return a
5 verdict of not guilty for Michael Nelson.

6 And the first area of reasonable doubt that I want to
7 talk to you about is the testimony of Ray Lee. The
8 testimony -- or the evidence against Michael Nelson all is
9 funneled through Ray Lee it seems to me. He's kind of the hub.
10 And all the evidence that the government wants you to -- that
11 the prosecutor wants you to believe all kind of funnels through
12 Ray Lee.

13 But let me -- I want to tell you a story. I'm Irish,
14 and Irish love to tell stories, ladies and gentlemen. I'm
15 going to tell you a story. Back in 1945 at the end of the war,
16 after the Nazis had been defeated by the Allies and the Allies
17 had seen what the Nazis had done to the Jews, to the
18 intellectuals, the teachers, the gays, the gypsies, and seen in
19 their own eyes the final solution, the Allies decided to
20 prosecute the Nazi criminals for the final solution -- who had
21 planned out the final solution and who had implemented the
22 final solution.

23 And at that time United States Supreme Court Justice
24 Robert Jackson was asked by the Allies to head the prosecution
25 of the Nazi criminals. And deals had been given to Nazis to

1 testify, accomplices. Some had been given immunity, lesser
2 time in prison to testify. And, of course, the testimony in
3 the trial was at Nuremberg in Northern Bavaria in Germany. And
4 this is what Mr. Jackson -- or Justice Jackson said to his
5 prosecutors as he sat them down and talked about accomplice
6 testimony. And this is what he said to the prosecutors. He
7 said this: All such people are desperate. They all want
8 freedom. They know the intricate details of everything
9 involved in the prosecution of these cases because they were
10 primary figures in these cases. For some reason we have chosen
11 to let them go free because of their testimony. The testimony,
12 therefore, must be examined not only with the greatest of
13 scrutiny but with an eye to avoiding the use of it if at all
14 possible. Any alleged coconspirator can testify without
15 refutation about anything he desires. About secret meetings.
16 Secret negotiations. Reasons why the accused did certain acts.
17 By whom they were directed. Some of it may be true, all of it
18 may be true, or none of it may be true. We have no way of
19 knowing now or ever whether or not these people were telling
20 the truth. We were not there.

21 That's what Justice Jackson told his prosecutors as
22 they got ready to try this case, ladies and gentlemen.

23 Now, when you decide this case, I'd like you to
24 consider two things about the testimony from Ray Lee, if you
25 would, please. Remember what Ray Lee said at the time of

1 sentencing. I think that is a look into his soul, into his
2 very being for whether you can trust his testimony or not.

3 Now, when he came for sentencing, you always -- you
4 tell your clients "Put your best foot forward. Man up." I'm
5 not trying to be sexist. But stand up and be a human being,
6 admit what you did. Don't minimize what you did. Tell the
7 Court. Be as honest as possible.

8 What did he say to the Court? He couldn't be honest
9 with the Court. And remember what he said. "I would like to
10 say that I'm not this bad drug dealer that they make me out to
11 be. I fell sick and I was unable to work and I went to drugs
12 as a means to get extra money." That's not truthful. That
13 he's not a bad drug dealer? You're a good drug dealer,
14 Mr. Lee? You spread your wealth all over the community? You
15 gave your money to charitable organizations? He wasn't even
16 being truthful to the judge when he came here. He couldn't
17 even be truthful to the judge.

18 The sentencing, I think, transcript tells you
19 everything you need to know about Ray Lee, whether you want to
20 trust him or not. Whether you wouldn't hesitate but for a
21 moment to believe what he's saying.

22 So I want to go back to the definition of reasonable
23 doubt and defining Ray Lee, ladies and gentlemen. Remember
24 that which would cause you to hesitate in making the most
25 important decisions in your life. Ask yourself about Ray Lee.

1 Ask yourself this: Would you buy a home from Ray Lee? If
2 Ray Lee came to you and said, "I've got a home for you,
3 Mr. Phelan" -- or anyone in the jury -- "I've got a home for
4 you, it's a good home, the roof doesn't leak, the furnace
5 works," would you trust him to buy that home? If you would say
6 "Oh, man, I don't know, Mr. Lee, knowing what I know about
7 you," that's that hesitation. That's reasonable doubt, ladies
8 and gentlemen.

9 The second area I want to talk to you about are the
10 wiretaps. Now, the prosecution says that's Michael Nelson.
11 They say that's his voice. Who is the only person on God's
12 green Earth that came in and said that was Michael Nelson's
13 voice? It was Ray Lee. Ray Lee. The prosecution, with all
14 their power, with all their money, could have brought an expert
15 in. We've had experts, right? Had drug experts, had chemist
16 experts. They could have brought an expert in to say, "I've
17 look at a controlled voice of Mr. Nelson and I've compared it
18 and it's Mr. Nelson's voice." The only person is Ray Lee who
19 identifies that voice.

20 Remember what I said on opening, ladies and
21 gentlemen. Those tapes, those wiretaps, are only as good as
22 Ray Lee.

23 The third area I want to talk to you about a
24 reasonable doubt, ladies and gentlemen, is the surveillance.
25 This surveillance that they say was a delivery of drugs on the

1 25th of July and on August 11th to Michael Nelson. Again, who
2 talks about the delivery? Ray Lee. All the evidence goes
3 through Ray Lee.

4 After the August 11th alleged delivery there's no
5 surveillance of the Temple address, right? That's where he's
6 supposed to be living and that's where the drugs are delivered,
7 but there's no surveillance. I mean, we've got surveillance
8 all over the place here. We've got pole cams. We've got the
9 police, right? And there's no surveillance there. They don't
10 put a police officer there to see "Oh, yeah, okay, I saw people
11 going out and back," right? "Going in, buying drugs, and
12 coming out. I suspect that these were Michael's customers."
13 We don't see anything like that. All they had to do is put a
14 police officer there, right? They could have put a police
15 officer there July 25th for a couple of days. They could have
16 put a pole cam up, right? How hard is that? And they don't do
17 that. Again, the surveillance all through Ray Lee.

18 And that leads me to further say, ladies and
19 gentlemen, remember on September 3rd, 2017, Michael's arrest,
20 the police come over, they arrest him, they do a search
21 warrant, they look at the house top to bottom, and has any
22 evidence been presented of drug dealing from Temple to you?
23 Any evidence whatsoever been presented to you of drug dealing
24 out of the Temple residence? There's been no drugs presented
25 to you out of the Temple residence. No cocaine. There's been

1 no drug records presented to you out of the Temple residence.
2 There's been no multi phones or whatever presented to you out
3 of the Temple residence. There's been no large sums of cash
4 presented to you out of the Temple residence. There's been no
5 guns presented to you out of the Temple residence. No money
6 counters. We have a money counter right here. No money
7 counters. No drug residue. They could put a chemist in there,
8 right, and say, "Well, we think the drugs have been held right
9 here and were put in baggies and we're going to do a field
10 test." That's the reason I asked. No -- nothing sent to a
11 lab. There's absolutely zero evidence to corroborate what
12 these people are saying about Michael. And like cocounsel
13 said, we don't have the burden of proof. I mean, that's on
14 them. That's on them.

15 But I think, ladies and gentlemen, what I'd say to
16 you, the key in the case I think is this on Michael, and I
17 touched on it a little bit: There's not one person on God's
18 green Earth that came in and sat on that chair and said they
19 were a customer of Michael Nelson. Not one person. Presumably
20 the drugs were delivered to Mike, to Michael, not to sell to
21 himself obviously but to sell to other people. Where are the
22 customers? There's not one person that's come in here that's
23 said -- sat down and said, "Yeah, I went to Michael's house and
24 I bought an 8-ball." Three and a half ounces. Three and a
25 half grams. "I bought an 8-ball from Michael Nelson." Not one

1 person.

2 It's like that commercial, ladies and gentlemen, that
3 we saw a number of years ago. It's a little old lady, Claire I
4 think was her name, and she was in this hamburger shop, I
5 think. It was supposed to be McDonalds, right? And she orders
6 a hamburger, and she opens it up, and there's a little patty of
7 beef, and she goes "Where's the beef?" Where's the beef in
8 this case? Not one customer could come in here and say that
9 this man is a drug dealer.

10 Now, I want to leave you, ladies and gentlemen,
11 close -- remember this: Anybody can say anything about anyone
12 at any time and that doesn't mean it's true.

13 Now I want to leave you in closing with this, ladies
14 and gentlemen, with this final story. Again I've got to tell
15 you another story. I'm going to leave you with a story. I was
16 in the Army back in 1974. I went in the Army after college. I
17 was in the Army four years. So I went in the Army from '74 to
18 '78. And I got orders right as I was graduating to go to
19 Germany. The alternative was to go to Vietnam. And so when I
20 got these orders to go to Germany, I was a happy person.
21 Nobody was going to be shooting at me. So I went -- so I went
22 over to Germany. It was a wonderful time for me. I was 22
23 years old. I wasn't married. And I got a chance to see Europe
24 and live over in Europe for almost -- over three and a half
25 years. And it was a wonderful time. And I had an opportunity

1 to go to England. I went to England a couple times. And one
2 of the times I was in England I went to -- and it was kind of
3 north central England, I forget the name of the town -- but I'd
4 always thought about being a lawyer, and my dad was a lawyer.
5 He was a country lawyer in Iowa, southeastern Iowa. He was a
6 good lawyer. Just a country lawyer. And I always thought
7 about going to law school. So I was in this town and I went by
8 the courthouse, and I decided, "Well, I'm going to go in and
9 see this courthouse." And so I went in, I went into the
10 courthouse. And they were really nice to me and they kind of
11 took me around. The English -- and it turned out that this
12 courthouse was one of the oldest courthouses in England. It
13 was centuries old. And I went into the courtroom, they took me
14 into the courtroom and showed me around the courtroom. And
15 English courtrooms are a little different than ours, but it was
16 really a majestic courtroom. Not as big and beautiful as this
17 courtroom. But I just thought about all the centuries of
18 people and cases that have gone through this courtroom. And
19 they had a plaque, they had a framed picture on the wall in the
20 courtroom, and this is what it said, ladies and gentlemen --
21 and I wrote it down, and I've kept it with me all these years,
22 all these years, 40-some years -- "In this hallowed place of
23 justice, the crown never loses, because when the liberty of an
24 Englishman is preserved against false witness, the crown wins."
25 Ladies and gentlemen, I've tried many, many cases

1 over years and years of being a lawyer, and I can tell you that
2 the United States never loses, because when the liberty and
3 reputation of one of its citizens is preserved against false
4 witness, the United States wins.

5 I want to thank you again, ladies and gentlemen, for
6 listening to me, and I would ask you to return a verdict of not
7 guilty for Michael on all counts. Thank you very much. Thank
8 you, Your Honor.

9 *THE COURT:* All right. Thanks, Mr. Phelan.

10 We'll go to Ms. Chartier. Will you be using the
11 screen?

12 *MS. CHARTIER:* No, thank you, Your Honor.

13 *THE COURT:* All right.

14 *MS. CHARTIER:* As you've seen over the course of this
15 case, drug dealing is always about the money. I did not plan
16 on starting my closing with a quote from the government that
17 they started their closing with, but that quote and that fact,
18 which is what you learned from that witness stand, tells you
19 that you cannot trust Ray Lee. Because we hear the government
20 say drug dealing is about the money. We heard their opinion
21 witness say drug dealing is about the money. You heard Mr. Lee
22 said this is about the money. This is a dangerous business and
23 it is all about profit.

24 But what does Mr. Lee tell you? The one and only
25 person he makes no profit on is Mr. Tatum. On two kilograms of

1 cocaine and on the supposed testers he makes no money. And the
2 reason why he had to testify that way is he messed up when he
3 was telling his story to the government through his proffer
4 sessions. He made up a story about how much he was charging
5 Mr. Tatum, but then he also talked about how much he was paying
6 for the cocaine. And then, uh-oh, he gets on the stand and
7 realizes that means he makes no money off of Mr. Tatum. That
8 indicates it is a lie from Mr. Lee, because no one is going to
9 give over two kilograms of cocaine and take that risk when they
10 are making absolutely no money. You heard him. He sets the
11 price. He decides who he fronts to. His story does not work.

12 Time to Mr. Lee and Mr. Swain is the only currency
13 that matters right now. Money is useless to them because they
14 are spending years and years in prison. And they looked at
15 spending a lifetime in prison. And I ask you to think about
16 how you felt when you heard you might be here for three weeks
17 on this jury. All of you in your head were thinking about "I'm
18 going to be away from my family. I might miss a wedding. I
19 have to miss work." All of these very important aspects of
20 your life.

21 Now imagine you're Mr. Lee and Mr. Swain and you're
22 not just gone for three weeks with jury service, you're gone
23 for a lifetime in prison. Would these men lie to spend less
24 years in prison? Of course they would. They would lie to the
25 government, they would lie to the Court, and they would lie to

1 you.

2 Mr. Phelan discussed the beyond a reasonable doubt
3 standard, and he said, "Would you buy a home from Mr. Lee?" I
4 ask that you consider the most important decisions in your life
5 that you have either made or will make that rely on evidence
6 and information from other people. Who handles your finances
7 and the finances for your children's college fund or for your
8 retirement? If you have to make a medical decision for a sick
9 child or an elderly parent. If you were in the military, as
10 Mr. Nyamfukudza was, for 12 years during wartime and you have
11 to make decisions that literally will mean whether young people
12 come home or unfortunately perish on the field. They rely on
13 decisions and information from other people. And then think
14 about what you were presented here. Calls and contacts that
15 are ambiguous at best. The government says one thing;
16 Mr. Tatum has said another. And he put up people to back up
17 what he said those conversations and meetings were about.

18 The government did a search of Mr. Tatum's house
19 where they believed that there would be indicators of drug
20 dealing, which we'll talk about in a minute. None of them came
21 up. Not one. No drugs, paraphernalia, anything that they were
22 looking for.

23 Then you have two men who have every reason to lie.
24 Imagine evaluating this if making a decision where you're
25 deciding for medical treatment for your parent, an elderly

1 parent. A doctor comes to you and says, "We have evidence that
2 it could be one thing or another. We think if we run this
3 test, we'll find 20 markers of what we believe is occurring."
4 And they do and nothing comes back. And then they say, "Wait,
5 we have two people who are going to try to convince you to act
6 on. These individuals have lied and these individuals have a
7 vested interest in you believing them." Would you act on that?
8 Because here for you it's not a matter of choices, you only
9 act, you only convict if you have no reasonable doubt
10 whatsoever. One reasonable doubt and it has to be a not-guilty
11 verdict.

12 Calls and text messages for all of those contacts,
13 context matters. You know that. You heard from Agent Giudice
14 when it is a nonpertinent call, then they don't record it.
15 They don't share it with you.

16 What did you hear from Mr. Tatum? There had been a
17 call that he had with Mr. Lee explaining one of their voice
18 messages back and forth. One of their phone calls. Mr. Baker
19 said, "Are you serious? Gee whiz, there's this other call?"
20 What did we learn today? There is another call. A 32-second
21 call. That explains what "it" means. Without context you
22 cannot rely on what Mr. Lee says the conversation was about.
23 Unlike with some of the other calls and text messages that
24 you've seen, they don't have any explicit conversation about
25 drugs. There's nothing about a quantity. There's nothing

1 about money. There's nothing about police surveillance.

2 Mr. Lee tried to tell you he fronted two kilograms of
3 cocaine to Mr. Tatum. You don't think he'd be blowing up his
4 phone asking where my money is? You think Mr. Lee is going to
5 wait patiently for it? The context that you have not been
6 provided would support what Mr. Tatum testified to on the
7 stand.

8 Mr. Lee wants you to believe that all the sudden in
9 the middle of July 2017 Mr. Tatum asks him "Can I buy a
10 kilogram of cocaine from you?" You heard from witnesses no one
11 starts with a kilogram of cocaine. And then Mr. Lee decides
12 he'll front it to him. Someone who has never purchased from
13 him ever. It makes no sense. But Mr. Lee has to tell you that
14 story in order to support the next time they meet, which is
15 July 18th. Because Mr. Lee gives him a Food Saver box and
16 Mr. Tatum gives him a bag. And so Mr. Lee has to come up with
17 this story because he knows what the government's theory is and
18 he's got to fit it in, so he's got to say "I fronted him that
19 first kilogram of cocaine and that's what that exchange was
20 about."

21 But you've seen other videos. When has Mr. Lee
22 walked out with a big old Food Saver box or a big box of
23 anything? A kilogram of cocaine is a brick. Why is he
24 carrying it in a big Food Saver box? Because it's not a
25 kilogram of cocaine inside. It's a scanner, as Mr. Tatum told

1 you.

2 Mr. Lee at his heart is a wheeler dealer. If he
3 could make \$200 off a scanner he's not using, of course he'd
4 sell it. And any witness up on that stand who tells you they
5 can see through that plastic bag and it's a bagful of money is
6 not being truthful. Because you cannot see through that bag.
7 You saw the video. You can't tell what's in it.

8 And that same witness also misidentified poor
9 Dante Howard twice when it was Mr. Tatum and another gentleman.
10 Assumptions lead individuals to get up on the stand and say
11 certain things. And assumptions may be well-intentioned, but
12 assumptions we heard from Agent Schafer -- or Officer Schafer I
13 should say -- assumptions can be wrong.

14 In the conversations that Mr. Tatum had with Mr. Lee,
15 again you heard nothing explicit, but what do you hear from
16 Mr. Lee? And we played it for you. He didn't know he was
17 being recorded. He wasn't shy about talking about his
18 drug-dealing business. He told people how much to charge for a
19 gram. How much to charge a fiend. Where to hide drugs so the
20 police don't find them. That was that testicle -- where he
21 talks about hiding it under your nuts and wearing tight
22 underwear. He's talking about law enforcement. He's talking
23 about hiding drugs. Particular amounts, what to pay people.
24 None of that with Mr. Tatum. If Mr. Lee doesn't know he's
25 being recorded, and he doesn't, why isn't he having these

1 explicit conversations with Mr. Tatum? Because the calls are
2 not about drugs.

3 The meetings that they had at the Woodland Mall and
4 then at the hotel, think about if you know someone or if you
5 yourself have ever purchased anything off of Craig's List or
6 e-Bay, do you have that person come to your house? Have you
7 ever bought concert tickets or ball tickets? You don't have
8 that person come to your house. You meet them at a public
9 place because you just don't know someone that well.

10 The lack of profit winds its way through this entire
11 case. Think of Mr. Lee getting profit and making money off of
12 a man he believes is like his godbrother, Mr. Kirkland. He
13 makes a profit off of a woman he's romantically involved with.
14 He makes a profit off of everyone.

15 He also cannot keep his stories straight. He gave
16 you four different versions when I asked him about it on how
17 much Mr. Tatum supposedly owed him, ranging from \$200 up to
18 \$3,000 on the stand. You heard Mr. Lombard say it, but it's
19 true, the truth doesn't change but lies do. Try and keep track
20 of a lie in your head, especially if you're Mr. Lee and you
21 have told lies so often. Of course you're going to get tripped
22 up on that witness stand. Because these are falsehoods.

23 As it relates to the meeting on July 18th, think
24 about this: Supposedly Mr. Tatum buys a kilogram of cocaine on
25 July 14th. Four days later he burns through it but yet they

1 have no other -- because Mr. Lee says it was July 18th when he
2 gave him another kilogram of cocaine -- but then there are no
3 other purchases of cocaine after that. At that rate he's
4 employee of the month, so why isn't he selling it more and more
5 and more?

6 Think about where Mr. Tatum parked at the mall. You
7 saw it on the video. If he's doing this drug deal, he's going
8 to park away from other cars. He's there already. There are
9 cars all the way around. People walking in and out.

10 Mr. Lee wasn't waiting in the car to see if people
11 would go away. You saw the picture that the government put up
12 in their closing. Mr. Lee is standing literally in the street
13 holding a phone while he's screaming into it "K1, K1." That
14 guy is not shy. He's not waiting for people to leave. He's
15 doing what Mr. Tatum said, finishing up a call and then jumping
16 into Mr. Tatum's car.

17 These supposed two tester packets of heroin. The
18 first time Mr. Lee says this under oath is in this courtroom.
19 He never mentions that in the grand jury, and he is asked an
20 open-ended question: How many times have you supplied drugs to
21 Solon Tatum? Tell us about that. He never mentions heroin
22 under oath until he takes the stand. But he has to try and
23 explain that July 26th call. He says he supplied him two
24 quarter/marble-sized testers of heroin. What is he wrapping a
25 rubber band around? Is that more plausible than the clippers

1 that you heard witness after witness testify Mr. Tatum worked
2 on? He liked doing it. He was a barber. He enjoyed doing it.
3 And he explained what the rubber band was holding, because the
4 screws in one of those clippers were loose.

5 Mr. Lee talks about the August 10th contact and says
6 that's him with Mr. Tatum talking about getting paid. There's
7 nothing about getting paid in that. Mr. Lee is going to sit
8 for weeks and weeks and weeks and wait for \$35,000? That's not
9 who Mr. Lee is. You saw who he is. And who he portrayed
10 himself to be on this stand is vastly different than the man
11 who you heard on those calls.

12 Mr. Lee says on August 12th the phrase "run into you"
13 means buying drugs, but on August 14th the phrase supposedly
14 means paying for drugs. Without any interaction between these
15 two between August 12th and August 14th that we've heard about
16 Mr. Lee suddenly has two totally different interpretations of
17 that phrase.

18 Mr. Lee had said on August 14th he had no idea what
19 was in that T-Mobile box that Mr. Tatum walked out of the mall
20 with and then walked back into the mall with.

21 Also think of Agent Burns, who the government put on
22 the stand. He talked about coded language. Did he once tell
23 you that "run into you" means buying drugs or paying for money?
24 Did he once tell you that "touched" meant cut? He told you
25 about everything else but not about that.

1 We know the government can do a thorough
2 investigation. They did it as it relates to Yusef Phillips and
3 Ray Lee. Helicopter surveillance. Everything. What didn't
4 they do for Mr. Tatum? Never pulled him over. Agent Giudice
5 said that would hinder their investigation. But getting
6 evidence to clear an innocent man doesn't hinder an
7 investigation. And if they make the choice to do that, they
8 can't ask you to fill in the gaps and guess about what the lack
9 of evidence shows.

10 They did no trash pulls on his house. And the time
11 to do it would be after that Food Saver box goes in his car.
12 You want to know what's in that box and you don't want to pull
13 him over, you do a trash pull, which Agent Burns said was a
14 great and simple way to get evidence. What would they have
15 found if Mr. Tatum was a drug dealer? Residue and packaging
16 material, right? That's what we saw in all the other trash
17 pulls. None of that was in his house. They don't have a
18 controlled buy with Mr. Tatum. They don't have a confidential
19 source during the course of the investigation who said
20 Mr. Tatum was selling them drugs. What they do have are
21 assumptions, which carried over into the Complaint, search
22 warrant, and arrest warrant, which Officer Schafer admitted
23 they made mistakes as it related to Mr. Tatum. Wrong address.
24 Saying there was an intercepted call specifically and
25 explicitly talking about drugs. Never happened. Saying

1 Mr. Lee went to Mr. Tatum's home. Never happened. Saying
2 Mr. Lee left Mr. Tatum's home after delivering drugs. Never
3 happened.

4 When this case started in September of 2017
5 Officer Schafer admitted under oath they did not have one
6 person to say they had ever sold drugs to Mr. Tatum. They did
7 not have one person to say they had ever bought drugs from
8 Mr. Tatum. But now they do. They have one person who says
9 they sold, Mr. Lee, and one person to say they bought,
10 Mr. Swain.

11 Mr. Lee, we've discussed, has been a drug dealer
12 since 1992. Standing in this courtroom telling this court he
13 turned to drugs for health reasons is a lie. It's not even
14 something that's kind of true. It's false. It is blatantly
15 false.

16 He knew he was looking at life in prison and he
17 wanted a way out, and what better way out than to give more
18 names and more names and more names.

19 When it comes to Derrick Swain, think of the one
20 phrase that encapsulates his entire testimony: What if I lied
21 during my proffer? That's what he said to the government. He
22 didn't say, What if I can't remember things? What if I'm wrong
23 on the math? What if I'm confused on the dates? What if I get
24 nervous from the witness stand? All valid things a witness
25 would say. What does he say? "What if I lied during my

1 proffer?" You only ask that question if you lied during your
2 proffer. It doesn't come to you for any other reason other
3 than you lied.

4 He knew what would happen if he admitted he lied, and
5 he found out quickly. The government let him know. "You get
6 more time if you admit you lied. If you refuse to testify,
7 we're going to get a court order, we're going to make you
8 testify. You have a contract with us. That's what a
9 Plea Agreement is. It is a signed contract. And your contract
10 says you come in here and you testify if we want you to. So if
11 you say you lied, you get more time. And if you don't testify,
12 you get more time. So you better get in line and get on that
13 stand." And that's what Mr. Swain did. And we know he lied.

14 We know that on that witness stand he could not
15 recall what he had told the government. He said on the witness
16 stand it was two or three times, but his proffer session had
17 said five or six. It's a vastly different story. And we know
18 it's a lie because the truth doesn't change.

19 He was not honest about his own relationship with
20 drug dealing. He told the Court during sentencing it was -- or
21 excuse me, his plea -- it was a one-time kind of thing. We
22 know it was at least a two-time kind of thing. He was the guy
23 who went to Chicago. He was the guy who got cocaine. Sure
24 there was another instance when that wasn't him, but on one of
25 those instances it was him. And he didn't say that in this

1 courtroom. He has a criminal history dating back to the
2 nineties. He didn't turn to drug dealing to feed his family.
3 He turned to drug dealing decades ago. He said that in this
4 courtroom to try and get the lowest sentence he could get
5 because he knows what it takes.

6 If he wanted to feed his family, he would get a job,
7 because he had someone who had offered him a job doing snow
8 removal and lawn care. A tough job. A physical job. But a
9 job that Mr. Swain didn't want. He wanted the easy way out.
10 Just like he does right now. He was so happy to get less time
11 in prison, he would say whatever. He does not want to be away
12 from his family any longer than he has to. He knows bad things
13 will happen if he does not go along with the government and
14 good things happen if he does.

15 I also would like to talk to you about the search of
16 Mr. Tatum's house. No drugs found there whatsoever. How is he
17 opening up a kilogram of cocaine and not one speck is anywhere?
18 You heard from Dr. Augustine what he does at a DEA lab in
19 Chicago. He puts it under a hood. He wears a lab coat,
20 gloves. He uses a scalpel. When I asked him how he does it to
21 make sure it doesn't go anywhere, he says very carefully. So
22 how is this guy doing it and it's not getting anywhere? Not
23 one speck anyplace. Car, house, clothes, nothing. They find
24 nothing. He's a drug dealer with no drugs. He's a drug dealer
25 who has no supplies. The reason they don't find it is he's not

1 dealing drugs.

2 Anyone who likes to cook or bake, think about opening
3 up a container of flour. If you're like me, I don't know how
4 it gets there, but it's right on the top of the cabinet, behind
5 the toaster. You always have some little speck or residue of
6 what you've made. But this guy doesn't? Mr. Tatum doesn't?
7 When Dr. Augustine has to take all of these very careful steps
8 in a lab.

9 You heard from Special Agent Burns and
10 Officer Schafer about the types of things that you would find.
11 Cutting agents. Not with Mr. Tatum. Baggies, scales, kilogram
12 presses, gloves, masks, wrapping, and packaging materials.
13 None of these found at his house.

14 You've heard from Officer Albert a common place to
15 hide money or drugs is in shoe boxes. And you saw that with
16 Mr. Lee. When they opened up his shoe boxes, what did they
17 find? Money and drugs. When they opened up his shoe boxes,
18 what did they find? Shoes. He's been wearing the same size
19 since the ninth grade. He likes shoes. What's inside? Shoes.
20 They didn't find any contraband there.

21 Agent Burns told you it is infrequent that dealers
22 will keep things in their own name. They don't want a paper
23 trail. We heard in the opening -- or excuse me -- closing,
24 drug dealers don't like banks. What do we have with Mr. Tatum?
25 His car in his own name at his own address. Both through the

1 Secretary of State and through the leasing agent.

2 He leased a car for his college-age daughter in his
3 own name at his own address through the Secretary of State and
4 the leasing agency.

5 What does he have? A bank account. In his own name,
6 with the mother of his children's name and his adult daughter,
7 and he's keeping all the receipts. He's using a bank. He's
8 using credit agencies in order to get the leased vehicles.

9 We've heard that drug dealers have multiple phones.
10 What did they find? One phone for Mr. Tatum. How much money
11 does he have? \$2,340. Hidden in a shoebox? No. In a jewelry
12 box. In a drawer. Which is where people keep money when they
13 don't mind if someone finds it.

14 He didn't know the police were coming. He has no
15 reason to hide anything. Put it right in a drawer. He's in a
16 cash business. You heard he makes a hundred -- he has six
17 individuals who are paying him \$125 a week to rent a chair at
18 the barber shop. That's \$900. And then he has the other money
19 that he makes from cutting hair and trimming beards. That
20 accounts for the money in his house. And it is certainly not
21 excessive.

22 He doesn't have unexplained wealth. Shoes he's had
23 for decades. He lives with his parents in a modest home where
24 they have lived for years. He sleeps in the basement. No
25 hidden compartments in that house. No Tang bottles or lemonade

1 bottles where you can hide drugs.

2 When Mr. Tatum took the stand he was nervous. Who
3 wouldn't be. But he wanted to tell you what those calls and
4 contacts were about, and he did so honestly. Because if he was
5 trying to lie, he would have minimized his income. He could
6 have said like Ray Lee, "I make \$60,000 a year." For Ray Lee
7 that is a lie beyond lies. He couldn't even be truthful with
8 you about that. About how much money he was making. And then
9 said, "Oh, no, my brother and I have never given any money to
10 our mother," with her nine properties in her name. Do you have
11 nine properties in your name? Do you think she's getting that
12 from her job at a hospital?

13 Mr. Tatum was truthful about the money that he made.
14 He was truthful about the contacts he had with Mr. Lee. You
15 heard witnesses say yes he helped fix their credit. Mr. Lee
16 told him he might have some customers for him and he wanted to
17 follow through with that.

18 You know now better than when you started what's at
19 stake for the men who take the stand and the men who make deals
20 with the government. It's the difference between life in
21 prison or decades in prison and getting out in five years,
22 six years, seven years. And for any of you who have young
23 children or who have had young children, think about that. If
24 you're Mr. Swain, there's a big difference between getting out
25 when your child is eight and when your child is a teenager.

1 When your child is 18. You miss their entire life unless you
2 cut a deal. And they will do whatever it takes.

3 Lee told you time is the only currency. It's not
4 just about missing the big things: Weddings, graduations,
5 birthdays. It's all the little things that come in between.
6 When your kids are home and your spouse is home at night and
7 it's cold out like it is right now but you've got the fireplace
8 on or the heater on and everybody is safe and everybody is
9 warm, and you can hear laughter in the other room and you're
10 folding laundry or you're doing dishes and you think "I am the
11 luckiest and happiest person because everyone I care about is
12 under this roof and everybody is happy and safe." And that's
13 what they are missing by being in prison, a cold and dark
14 place, and they will do whatever they can to get home to their
15 family.

16 The oath you took as jurors is one of the most
17 important, if not the most important, you'll ever take in your
18 life. This process couldn't work without you. You breathe
19 life into the Constitution. It is mere words on paper without
20 all of you. It is serious business being a juror.

21 If you would not rely on Ray Lee and Derrick Swain in
22 making the most important decisions in your life, you cannot
23 rely on them in making the most important decision in
24 Mr. Tatum's life. For all the reasons I've discussed, for all
25 the reasons that you know, we ask you to return a not-guilty

1 verdict on all the counts for Mr. Tatum. Thank you.

2 *THE COURT:* All right. Thank you, Ms. Chartier.
3 We'll take our next break now. And this one we'll make 45
4 minutes. So plan on coming back right at 2:00. Okay?

5 *(Jury exited the courtroom at 1:23 p.m.)*

6 *THE COURT:* See you at two.

7 *(Recess taken at 1:24 p.m.)*

8 *(Jury entered the courtroom at 2:08 p.m.)*

9 *THE COURT:* Well, welcome back. We're here for our
10 next segment. We'll pick up right where we left off, and so
11 I'll turn it over to Mr. O'Keefe for closing argument on behalf
12 of Mr. Howard.

13 *MR. O'KEEFE:* Thank you, Your Honor.

14 Thank you, ladies and gentlemen of the jury. I'm
15 happy to report I'm still nervous, but I'm still excited to
16 talk to you about this case. And I appreciate your time. As
17 Mr. Phelan had said, we appreciate your service in this matter.
18 We could not do this without you.

19 As I said in my opening statement, a phrase sticks
20 out in my mind in this case: Oh, what a tangled web we weave
21 when first we practice to deceive. And without going over
22 every little segment of what I think the testimony shows, I'll
23 just say that I agree with Mr. Fauson that it's up to you to
24 decide whether or not you find certain witnesses credible.
25 Credibility is solely within the province of the jury.

1 And I would also add that it's up to you to decide
2 what it is you think these recordings mean. And you've heard
3 the prosecutor talk about some of the recordings that were
4 taken over the wire intercepts between Yusef Phillips and my
5 client, Dante Howard. And I would ask you to pay close
6 attention to those. And in particular Government's
7 Exhibit 8.4.637, which we're going to pull up for you right
8 now.

9 One of the things that Mr. Fauson did not show you in
10 his closing argument -- he certainly isn't obligated to show
11 you -- but there's a segment in this conversation, and if you
12 look down in the area of the middle of that conversation, you
13 see that Mr. Howard is having a conversation and he's telling
14 Mr. Phillips that she was gonna leave and just come over there
15 and pick up the money.

16 So if you look at this transcript and if you listen
17 to this tape, Mr. Howard is telling Mr. Phillips that this
18 woman on August 2nd is going to come over there to the
19 Woodland Mall and pick up the money. And if I could summarize
20 this case with one metaphor, it would be "What's in the bag?"
21 Because when we watch the video from that date, that meeting at
22 the Woodland Mall, we see Yusef Phillips drive to the mall,
23 park near TGI Fridays, and we see Mr. Phillips get out of the
24 car with a small bag. It looks like a shopping bag of some
25 sort. It's not a duffel bag. It's about at least two if not

1 three hours after he leaves the stash house earlier in that
2 day. And we see him enter this car where supposedly, as he
3 says, he sold a kilogram of cocaine to the woman in the car.
4 And then we see Mr. Phillips get out of the car, and he appears
5 to be empty handed. He appears to have nothing in his hands
6 except a set of car keys. And Mr. Phillips would have you
7 believe that he is selling a kilo of cocaine for tens of
8 thousands of dollars, yet he steps out of the car and he steps
9 out of the car empty handed.

10 Ladies and gentlemen, I want to walk through you --
11 walk through a little reverse chronology in this case.
12 Starting with some of the testimony that we heard in this
13 trial.

14 Just a week or so ago we heard Etrevion Murphy
15 testify that he's never even met Dante Howard and that the only
16 reason he implicated Mr. Howard in his proffer interview is
17 because Yusef Phillips told him to do it so that he could get a
18 time cut.

19 And when we talk about these proffer interviews, what
20 we're talking about is we're talking about people who have
21 agreed to cooperate with the government, people who have not
22 only agreed to give them information about their drug dealings
23 but also people who are looking to implicate and point the
24 finger at other people in order to sweeten their deal. So
25 without going into a great deal of detail about why

1 Mr. Murphy's testimony should be viewed with a great deal of
2 skepticism, I would just point out for you that Mr. Murphy --
3 excuse me -- Mr. Phillips is the type of person who would tell
4 his young apprentice, a 22-year-old man, to go to the
5 government and to tell the government that Dante Howard was a
6 person that was also dealing drugs around that time.

7 So Mr. Phillips is the kind of person who would tell
8 another person to lie to federal agents, who would tell another
9 person to commit perjury in order to help himself out. That's
10 why Mr. Phillips' testimony should be viewed with a great deal
11 of skepticism.

12 Mr. Phillips testifies in this trial that he hopes my
13 client, Dante Howard, will go to trial so that Mr. Phillips
14 himself can get a better deal, so that he himself can get a
15 time cut. So you see the consistency there between what
16 Mr. Phillips himself believes and what he tells Mr. Murphy to
17 do in January of 2018 when Mr. Murphy submitted his proffer
18 interview to the government in this case.

19 In December of 2017, that's when we believe
20 Mr. Phillips told Mr. Murphy to lie to federal agents when he
21 told him before he went into his proffer interview to implicate
22 a person that he's never even met. And in December of last
23 year we know that Mr. Phillips gave his third proffer interview
24 in this case, and that is when he first disclosed that
25 Mr. Howard was supposedly dealing not just marijuana but

1 cocaine and heroin dating all the way back to 2013 or 2014.

2 We also know that my client was charged in the
3 Indictment in November of 2017 right after Yusef Phillips
4 testified before the grand jury in this matter and told the
5 grand jury that Mr. Howard was also dealing in narcotics.

6 In October of 2017 Mr. Phillips gave his second
7 proffer interview where the only mention he made of
8 Dante Howard was that Mr. Howard was buying marijuana in the
9 past. He doesn't mention cocaine. He doesn't mention heroin.

10 And in September of 2017, a few weeks after the
11 takedown, a few weeks after Mr. Phillips gets shot in the
12 chest, he doesn't mention a single thing about Dante Howard.
13 Mr. Phillips does not even mention after a three-hour interview
14 with Agent Giudice Dante Howard's name. And he's sitting down
15 for that first interview and he's giving the names of players
16 in this drug market. He doesn't even mention Dante Howard's
17 name at that time.

18 And as we know, September 3rd of last year was the
19 date of the takedown. This was the third shipment, according
20 to Agent Giudice, that had come into Michigan, into the
21 Western District, from out of state. And during this third
22 shipment the agents had 20 search warrants that were prepared
23 to be executed. They had 17 arrest warrants that were prepared
24 to be executed. And they ended up searching Mr. Tatum's house
25 that day pursuant to one of those search warrants. And

1 Agent -- one of the agents testified that there was a shipment
2 that went back all the way to I believe July 31st, and then
3 there was another shipment before that from July 17th. When
4 they searched one of the stash houses on September 3rd, one of
5 the agents testified that they found remnants of what must have
6 been left over from one of the July shipments. We saw a bunch
7 of packaging. We saw a bunch of empty packaging, we saw a
8 bunch of residue, and so on and so forth.

9 And so my point is this: If they assume that they
10 are not going to find any drugs over a month later after the
11 takedown or two months later after the takedown, then why are
12 they searching Mr. Tatum's house over a month after the last
13 shipment had come in? We know that none of the drugs that were
14 delivered to Mr. Phillips and Mr. Lee on September 3rd were
15 ever going to make it into the stream of commerce. We know
16 that they were ready, that the traps had been set, and that
17 those drugs were never going to make it out of that stash
18 house, and they never did.

19 We also know that 25 miles east of Grand Rapids on
20 that same date they arrested the gentleman, Mr. Cervantes, and
21 they found what appeared to be multiple kilos. There was
22 heroin, there may have been cocaine, there may have been
23 fentanyl. And look at what they did with all this stuff. They
24 mix it all together. We can't tell what evidence in those
25 boxes came from the stash houses versus what came out of the

1 semi truck.

2 They send the drugs to the lab. Do they send all the
3 drugs to the lab? No. They send heroin, they send cocaine,
4 they send fentanyl, but they don't even test the marijuana.
5 Now, this is a case involving an alleged conspiracy to deliver
6 marijuana, and here they are, the government is not even
7 bothering to test the marijuana or to weigh the marijuana.

8 On August 11, 2017, you see and you hear evidence of
9 a discussion that took place between Mr. Murphy and Mr. Howard
10 about a police presence. Mr. Howard is not charged with
11 talking about the police or the police's presence in the area.
12 He is charged with conspiracy to possess with intent to deliver
13 controlled substances. And yet the government would have you
14 believe that the contents of this conversation somehow prove a
15 conspiracy. It doesn't. It just proves that Mr. Howard and
16 Mr. Phillips were talking about police presence around that
17 time. That's it. If you don't believe me, go listen to the
18 tapes themselves. You won't hear anything about "original."
19 You won't hear anything about "boy" or "girl" or "H" or "coke"
20 or "powder" or "smoke." Nothing. There's absolutely zero
21 discussion about the supposed narcotics that these two
22 individuals are dealing in. And that, ladies and gentlemen, in
23 a nutshell, that is reasonable doubt.

24 The judge has already given you a definition of
25 circumstantial evidence. The common misconception that a lot

1 of people have is that circumstantial evidence is somehow
2 inferior to direct evidence. I would submit that the opposite
3 is true. Because that 33-pound bag of heroin that's sitting in
4 front of you, which I believe was destined for Philadelphia,
5 that doesn't even involve this conspiracy, that is clear
6 circumstantial evidence that the person who was in possession
7 of that was intending to deliver it. That doesn't lie.

8 When the guy comes in from outside and is wearing the
9 raincoat with the small drops of water and he's got the
10 umbrella with the small drops of water on the umbrella, that
11 evidence, ladies and gentlemen, does not lie. It speaks for
12 itself.

13 And so as the government said in their opening
14 statement, they were going to offer evidence that corroborates
15 the testimony of these cooperating witnesses. Because using
16 that same example, we cannot simply accept Yusef Phillips'
17 testimony that it was raining outside that day. We need to see
18 the beads of water on the raincoat. We need to see the beads
19 of water on the umbrella to be able to determine if
20 Yusef Phillips is really telling the truth or if he's trying to
21 pull the wool over our eyes to get himself a better deal. Or
22 to get his protege a better deal. And to them Mr. Howard is
23 nothing more than collateral damage. He is the proverbial
24 piece of garbage in operation garbage man. He is something to
25 be used and he is something to be discarded. He is something

1 to be thrown away because he's just a little guy, he's just a
2 pest control guy, and he's expendable in the eyes of
3 Yusef Phillips.

4 I have no quarrel with these gentlemen or with this
5 young lady here. These are honorable men and women. And I
6 agree they don't get to pick and choose who their witnesses are
7 going to be. I have no quarrel with their presentation of
8 evidence. They did an outstanding job. These are men and
9 women of honor. These are men and women who have integrity.
10 But ladies and gentlemen, there is no evidence that
11 corroborates Mr. Phillips' testimony that he was delivering
12 drugs to Mr. Howard, and that is the inconvenient truth that
13 they have to deal with. That is the one inconvenient fact that
14 they must deal with. So what they are left with is
15 Mr. Fauson's interpretation of what is on the phone calls, of
16 what he believes these two individuals are talking about on the
17 phone calls. And as I said before, his interpretation is not
18 what counts, ladies and gentlemen.

19 I heard it said that trafficking is all about the
20 money. It's all about following the money. Where is the
21 money? Where is the money that was supposedly transferred from
22 Dante Howard to Yusef Phillips? I submit to you that what was
23 in that bag on August 2nd in the Woodland Mall very well could
24 have been money. Based on the contents of that conversation,
25 it makes sense that Mr. Phillips was delivering money to

1 Mr. Howard, an individual with whom he had a bona fide business
2 relationship. Mr. Phillips himself testified that back during
3 this time he had hired Mr. Howard to do pest control jobs for
4 him. He would hire Mr. Howard who owned Howard Pest Solutions,
5 Howard and Sons Pest Solutions, to do spraying jobs at some of
6 Mr. Phillips' rental homes. And Mr. Phillips himself testified
7 that he would always pay Mr. Howard in cash.

8 I would encourage you, ladies and gentlemen, to look
9 at Government's Exhibit 94. Look at the video from the
10 Woodland Mall parking lot. Because that is the only video,
11 that is the only evidence that they have that would arguably
12 corroborate Mr. Phillips' testimony as it relates to
13 Mr. Howard. And you make the ultimate decision as to what was
14 in that bag.

15 As Mark Twain once said, I would have written a
16 shorter letter if I had more time. And I would like to talk to
17 you more, I have a lot more that I would like to say about this
18 case, but I want to spare you that time, and I want to spare
19 everybody else that time.

20 I would like to end my summation of the case by
21 pointing out to you that not one piece of drugs that's seated
22 here before you, not one single dollar was connected to my
23 client in this case. Not one single conversation where
24 anything about narcotics was ever discussed between my client
25 and Mr. Phillips. Not one single search warrant was executed

1 at my client's home. Not one single trash pull. I know they
2 have limited resources, the government does, but they don't
3 have any problem with flying a helicopter at 27,000 feet to
4 videotape this meeting at the Countryside Inn, yet they seem
5 too busy or too indifferent to execute a simple search warrant
6 at Mr. Howard's residence.

7 They seem to not have any evidence that Mr. Howard
8 was selling drugs. Because let's face it, they are saying that
9 he was buying drugs from Mr. Phillips or from Toranita Meridy
10 who has a rap sheet of theft convictions a mile long. They are
11 saying that Mr. Howard was getting these drugs from these
12 individuals so that he could turn around and deliver them and
13 sell them to other people to make money. There is zero
14 evidence that Mr. Howard made any money, that he sold any
15 drugs. Not one confidential informant. Not one Derrick Swain.
16 Not one single person, not one police officer to testify that
17 they saw him out in the streets dealing around these times.
18 And that, ladies and gentlemen, amounts to reasonable doubt.
19 And based on that, ladies and gentlemen, I am going to ask that
20 you find my client not guilty of conspiracy to possess with
21 intent to deliver narcotics. Thank you.

22 *THE COURT:* Thank you, Mr. O'Keefe.

23 And we'll go to Ms. Howard.

24 *MS. CHARTIER:* Your Honor, I don't like to interrupt
25 someone's closing, and I don't know if Mr. O'Keefe just

1 misspoke, but he referenced Mr. Tatum and the search of his
2 home twice. The evidence doesn't show that there were remnants
3 found in the home, so I just want to make sure that objection
4 is on the record. Thank you.

5 *THE COURT:* I'm sure the jury's heard me say in
6 instructions, and not just today, ultimately whatever decisions
7 you make have to be based on the evidence as you interpret it,
8 not the way any of these lawyers do. So we'll just repeat that
9 for now, and we'll go to Ms. Howard for her closing on behalf
10 of Ms. Atkinson.

11 Are you using the podium?

12 *MS. HOWARD:* I am, Your Honor.

13 *THE COURT:* All right.

14 *MS. HOWARD:* Good afternoon, ladies and gentlemen. A
15 lot of the past two weeks have been a dazzling case about
16 Ray Lee and Yusef Phillips. Helicopter surveillance, guns,
17 trash pulls, Fruit Fresh containers. Who knew what that was
18 just a couple of weeks ago. Semi trucks with hidden
19 compartments. Big bags of drugs that were weighed by the DEA
20 lab in Chicago. But none of that has anything to do with
21 Erika Atkinson.

22 Now, Mr. Fauson referred to the government's
23 witnesses Yusef Phillips and Ray Lee as imperfect human beings,
24 which I think might be the world's most generous description of
25 people ever. They aren't imperfect. They are manipulators.

1 They are demonstrated liars. They are professional con
2 artists. Ray Lee will lie until he gets caught. And you saw
3 him get caught several times on the stand. He told you how he
4 had a sort of relationship with my client, but yet he also
5 couldn't remember her actual last name. But he told you that
6 they dated for a year, spent time at each other's residences.
7 She spent time at his then apartment behind the Wal-Mart. Not
8 this big huge fancy house on Cascade, and not a stash house
9 apartment, but an apartment behind the Wal-Mart.

10 You'll remember he recalled the name of her teenage
11 son right away when I asked. He spent time with her son. They
12 went bowling together. They did the things which would lead
13 her to believe at least that they were in a relationship. But
14 he told you she was sort of someone he knew. I think she was
15 just another piece of chocolate to him. But it took her a year
16 to see through him and move on and try to start over in Texas.

17 I absolutely agree when Ms. Chartier said that
18 Ray Lee is a wheeler dealer. He's always trying to make a deal
19 for something. He admitted, for example, that he gave free
20 heroin to a woman he called Blackie. He admitted that he
21 wanted to have sex with her to investigators. However, those
22 two weren't connected he said. Those two had nothing to do
23 with each other.

24 And you heard the phone calls. Several of us played
25 various phone calls with Ray Lee on them. In real life he's

1 forceful, he's bossing people around. He sounds super healthy
2 to me. He's not the mousy guy he tried to portray himself up
3 there as, respectful and quiet. No, he's telling you where to
4 hide your heroin, how much to sell it for, sell it to fiends
5 for more. He's bossing people around. He's good at getting
6 vulnerable people to do things. And he was dealing with his
7 brother in these huge quantities.

8 If you believe Mr. Lee, he was fronting people, all
9 kinds of people, because that's what you do in this business.
10 However, he wasn't, he says -- although he was selling to his
11 own girlfriend, he wasn't fronting her. If you believe him,
12 there's only one reason that that would be the case, and that's
13 because he's afraid she's going to use the product before she
14 can sell it.

15 And you'll also notice that Mr. Lee does not point
16 the finger at his current girlfriend, Rebecca Johnson. She's
17 the woman that he was dating at the time of the takedown who
18 had \$360,000 in cash in her apartment. He's overheard by
19 investigators on the jail call asking her if they found it.
20 But he sticks with his story that she knew nothing about all
21 this money that she had in her apartment.

22 Now the deal. He's working on the ultimate deal.
23 He's trying to get a better and better deal from the
24 government. He's already talked himself out of a mandatory
25 life sentence. He should have gotten mandatory life in prison

1 two different ways. Both with his record and all of the
2 quantity of drugs he was dealing in and with his record and the
3 fact that he dealt heroin to someone causing their death.

4 Now, he denies that. He says he -- first he
5 testified he met my client through her adult son. Then he
6 admitted he met her through Fred Adams who was a gentleman he
7 said may have died from a heroin overdose that he dealt to him.
8 Tony Kirkland said, "Yep, he died of a heroin overdose and
9 that's who was supplying him." And he paid for the man's
10 funeral, but he has no idea what happened there.

11 But Mr. Lee has already talked himself out of his
12 mandatory life sentence. Now he's down to only 11 years for
13 the drugs, plus five for the guns he used. Guns, you'll
14 recall, he was prepared to use to protect his money and his
15 drugs if he needed to do it.

16 So now he's trying to make a deal again. He needs to
17 talk his way below the mandatory minimum of 10 years on the
18 drug conspiracy charge. He and his brother know how to get out
19 from under the heat. They are both extremely experienced.
20 They have always got a contingency plan. They have this nest
21 egg set up for their mother with her nine houses and piles of
22 cash all over the place, and they hoped that many of the people
23 that they have pointed the finger at would be forced to trial.
24 This is what they hoped for. Giving them both a chance to
25 testify and deal themselves into even less time off.

1 So let's talk about the specific charges against my
2 client and what the evidence is. Those charges are conspiracy
3 and possession with intent to distribute heroin on or about
4 August 13th of 2017. I'm going to go backwards and start with
5 the possession with intent charge.

6 Now, what evidence is there other than Ray Lee's
7 testimony? There's one July 2017 call referencing "28." The
8 August 12/13 calls referencing "28" and "a hundred." And
9 there's the meetings at Mr. Lee's home and the video of him
10 going to his alleged stash apartment.

11 Let's talk about the elements of what possession with
12 intent to distribute heroin on or about August 13, 2017,
13 requires. It requires both possession with intent to
14 distribute beyond a reasonable doubt and it requires heroin
15 beyond a reasonable doubt.

16 Now, there is nothing but Ray Lee's word to say that
17 either the "28" or the "100" referred to in those phone calls
18 is about heroin. We have no recovered drugs. We have no other
19 words we can use. We have no drug ledgers, no text messages
20 between the two of them. And we know that Mr. Lee dealt in
21 cocaine, marijuana, and heroin. We also know that the
22 government relied on Mr. Lee's initial story that the "28"
23 referred to in the July calls was about heroin, and the
24 government got egg on its face when Mr. Lee got up here and
25 testified, "Oh, wait, 28 means cocaine." They relied on that

1 and they got it wrong.

2 Then they relied again when they testified at the
3 grand jury and said Mr. Lee's initial story was that in
4 August "28" and "100" both mean heroin. And they got egg on
5 their face again when Mr. Lee got up and testified here in
6 trial, "No actually one was heroin and one was cocaine. I was
7 wrong about that." So you can't rely on what he has to say.

8 And we have this 10-minute meeting in August of 2017
9 at his home, where he didn't usually do deals, and we don't
10 know what happened in those 10 minutes. And if you think it's
11 equally likely any number of scenarios, equally likely that
12 Ray Lee supplied Erika with some cocaine and some marijuana, if
13 you think it's equally likely that he supplied her with
14 128 grams of cocaine or 128 grams of marijuana, that's not
15 enough to find beyond a reasonable doubt that Erika possessed
16 heroin with the intent to distribute it in August of 2017.

17 And that's assuming that you decide she was planning
18 to use whatever it was that she got in August of 2017 herself.
19 There's no other evidence of her intent to deal or distribute
20 drugs besides the quantity and the assumptions you were asked
21 to make by Agent Burns.

22 Agent Burns admitted that a user could go through
23 28 grams in a month. And we've got no controlled buys from
24 her. We've got no text messages. No other phone calls. We've
25 got no nothing showing any dealing by her. And no one fails to

1 leave a trail that the government can't find if they are
2 dealing those types of quantities. And they knew about
3 Erika Atkinson as of the date they did the takedown. So when
4 they did all of these search warrants, they knew her name. Her
5 car is registered in her name. They identified by the license
6 plate. They knew who she was. They could have searched her
7 place too.

8 And even if you find beyond a reasonable doubt that
9 Erika somehow possessed heroin in August of 2017 with the
10 intent to distribute it, you're going to be asked about the
11 quantity of heroin and what quantity was there. And there
12 simply is not the evidence to find beyond a reasonable doubt
13 that the "100" refers to grams of heroin. "28" could have been
14 the heroin. Or "100" could have referred to cocaine or
15 marijuana. And even if you think that you believe Ray Lee that
16 "a hundred" refers to a hundred grams of heroin, the government
17 is unable to prove Erika actually possessed a hundred grams of
18 heroin. There was no recovered drugs, so there's nothing for
19 the DEA to weigh. Any drugs that were received or weren't
20 received in August of 2017 weren't weighed. So you heard the
21 testimony about all the kilos that they recovered from the semi
22 and when they cut the kilo packaging off and they weighed all
23 of that, many of those weighed less than a thousand grams.
24 There's no evidence of what was actually received if in fact
25 that's what she got. So there's no way you can find guilt on

1 the charge or on the quantity question.

2 Now I want to talk to you a bit about conspiracy.
3 The judge has already instructed you that a conspiracy is a
4 type of criminal partnership and the government has to prove
5 you have two or more people agreeing to cooperate with one
6 another to distribute or possess with intent to distribute
7 controlled substances beyond a reasonable doubt. There's no
8 evidence to support anything like Erika Atkinson was part of a
9 conspiracy with Ray Lee. She was not his criminal partner.
10 I'd argue she wasn't even his romantic partner, even though
11 that's what he wanted her to believe. Ray Lee was someone who
12 smelled an opportunity. Always looking for an opportunity.
13 And he certainly smelled an opportunity when Erika Atkinson
14 moved back home from Texas.

15 When it's just Mr. Baker asking Mr. Lee the
16 questions, Ray Lee tells all of us that his sexual relationship
17 with Erika Atkinson was simply before she went to Texas. They
18 were just friends when she moved back. Then he admits on
19 cross-examination that he called her when she got back. He
20 wanted to have sex with her. Once her relationship with her
21 new partner was over, he moves in to close the deal. He has
22 sex with her again. Now, he denies that he ever offered her
23 money to have sex with him, but you'll have to decide if you
24 believe that denial.

25 Look at the government chart, 7E, showing contacts

1 between Erika Atkinson and Ray Lee in the time when she's back
2 from Texas. We don't have all of the communications between
3 the two of them because the government doesn't save wiretapped
4 nonpertinent recorded phone calls. She's never changed her
5 phone number. Ray Lee admitted they were talking during this
6 period about things that have nothing to do with drugs, which
7 he would have to do to get into her bed again. And now he says
8 she's buying regular quantities of heroin from him before she
9 went to Texas and when she got back, she's working her way up
10 to a hundred grams a month, or every three to four weeks
11 depending on what version. He's thrown various numbers out
12 into the air during his proffer, during the time when he got
13 prepped by the government attorneys, and up here on the stand.
14 She's clearly not buying a hundred grams a month or every three
15 to four weeks because we have four months of wiretapped phone
16 calls and we have one reference to "100" and two references to
17 "28." And that's if you believe that that's what they are
18 talking about. Even if you think those refer to grams of
19 drugs, where is our every three to four weeks a hundred grams?

20 I want to talk briefly about what I've called the
21 so-called drug phone. Remember that Erika Atkinson is
22 Tony Kirkland's only chance to try and work himself into a
23 further better deal. He's at the 10-year mandatory minimum
24 right now, and he apparently doesn't know anybody else here.
25 He doesn't even seem to know Erika's name. And he's Ray Lee's

1 godbrother. Ray Lee set -- I'm sorry, I'm getting too excited
2 to keep up with my slides. Ray Lee set Tony Kirkland's mother
3 up with a \$50,000 car and more than \$22,000 in cash in a bank
4 account. That is a nice nest egg.

5 Ray Lee has said so many things about this subject.
6 Two weeks ago in trial preparation with Mr. Baker and
7 Officer Schafer he said he got supposed drug user contacts
8 himself out of Erika's phone and gave them to Mr. Kirkland.
9 Then here on the stand he said he introduced the two of them
10 together and had them exchange the contacts themselves.

11 Now, Tony says he got an actual phone, which is a
12 problem because, of course, we don't have a phone anywhere.
13 There's various stories. Ray says he paid Erika in heroin.
14 Tony says, "Oh, Ray paid her in cash." Tony can't get his
15 timeline right. It happened in the summer. When, of course,
16 she didn't move until the end of 2014. And we know that
17 Tony Kirkland had a private lawyer here who observed the
18 testimony of Ray Lee the day before, then met with
19 Mr. Kirkland, and the two of them have had unlimited access to
20 each other driving in the van to and from the courthouse, at
21 the Newaygo County Jail. And the first time we ever heard
22 about Mr. Kirkland gave some contacts back to Erika when she
23 returned back was up here on the stand.

24 Now the government has nothing but vague stories
25 about this contact list or phone records. And Tony Kirkland is

1 a long-time drug user and alcohol abuser. He's driving around
2 in his Escalade, in his truck. He didn't need any contacts.
3 He's been doing this for years. He first admitted to the
4 government he was quickly selling a kilogram and a half of
5 cocaine a year and 2.6 kilograms of heroin a year. And he said
6 he was selling that long before Erika Atkinson ever met
7 Ray Lee. So it's only up here that he adjusts his timeline and
8 says, "Oh, well, after I got those contacts, that's when I was
9 doing so great. Oh, by the way, I had a prior supplier of
10 heroin and cocaine and I can't remember the name of that
11 person. That person slipped my mind." It's simply not
12 believable. You heard on the phone call Ray Lee bossing Tony
13 around, tutoring him on how to take advantage of fiends and
14 addicts and bump up his prices.

15 Ray Lee is a master manipulator with unlimited access
16 to Tony Kirkland at the jail. The only reliable evidence of
17 anything -- oh, and we heard Mr. Kirkland for the first time say
18 "I helped her move from Thomas Street." But we heard Ray Lee's
19 testimony this is the house on Watkins where Erika Atkinson
20 lived while they were dating. There's been no other testimony,
21 no other mention of this move by Tony Kirkland. The only
22 reliable evidence of anything is these two meetings in July and
23 August of 2017.

24 Ray Lee said he did not front her any drugs. He
25 didn't even trust her enough to do that. There's not an

1 agreement to cooperate to do anything or work together at all
2 between the two of them. Buying what the government claims is
3 a nonuser quantity, even if you believe that's what happened in
4 these two meetings, is not an agreement to cooperate or a
5 criminal partnership. It's a couple of sales. She's not his
6 criminal partner. If you believe him that he fronted other
7 people and he didn't front her, there is even less of a level
8 of trust between the two of them. These sales by themselves,
9 which is the only independent evidence they have if you believe
10 that's what happened, is not enough to prove a conspiracy. But
11 there's really, really not enough to prove a thousand-gram
12 quantity of heroin. The only way you get there is Ray Lee's
13 word for it. And he's already misled the government twice on
14 quantities and types of drugs, and that's for the two
15 phone calls we have some independent evidence for.

16 There's no other text messages, no other phone
17 records, nothing else, no other communications from this
18 four-month wiretap period that would support anything.

19 The government wants you to fill in the gaps of
20 what's missing in its case, and it says we couldn't collect
21 this other evidence because we were too busy collecting
22 evidence against Ray Lee and Yusef Phillips. And I agree that
23 was a great use of their resources. Those two shouldn't ever
24 be out again. But even if you think my client must be guilty
25 of something, the government has not put on enough evidence to

1 prove these charges here beyond a reasonable doubt. And for
2 that reason, I would ask you to return a verdict of not guilty
3 on both charges. Thank you very much.

4 *THE COURT:* All right. Thank you, Ms. Howard.

5 And we'll go to Mr. Frawley.

6 *MR. FRAWLEY:* Thank you. Good afternoon everyone.
7 You know, I love being here. I love being in this room with
8 all these people, you in particular, because you constitute the
9 jury. The jury system is the fundamental thing that makes our
10 country better than other countries from a legal standpoint and
11 criminal justice standpoint. You know, as you walk in this
12 building there's a thing on the door that -- actually it's part
13 of a quote but a little larger quote, and that larger quote
14 says "My fellow Americans, our long national nightmare is over.
15 Our Constitution works. Our great republic is a government of
16 laws and not of men. Here the people rule." And it goes on.
17 But that's Gerald Ford, the 38th president.

18 Fine notion. This is where great notions are tested.
19 This is where individuals, any of us, we all have the right to
20 a jury trial. It goes back and it's been tested over time. I
21 think it starts in Article III Section 2 of the Constitution,
22 and then it gets further refined by the Bill of Rights, by the
23 Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments. We
24 believe in it. It is our public policy.

25 What does that public policy stand for? It stands

1 for the presumption of innocence. That's where we start.
2 That's where you begin when you go back in that jury room and
3 you start to examine the evidence. It starts with the
4 presumption of innocence. And it doesn't change unless and
5 until the government proves beyond a reasonable doubt that in
6 my case Max Avery is guilty. So right this minute he's
7 presumed innocent. I don't have to do anything. It's all on
8 these two gentlemen right here. In their very able hands. You
9 can tell. You can see how organized they are. You can see
10 they know what they are doing. And they have resources. They
11 have the FBI, the DEA. They had what, 17 different criminal
12 agencies, investigatory agencies working. And yet they haven't
13 proved the case beyond a reasonable doubt against Max Avery.

14 There was no search of Max Avery's house, car. We
15 don't even know where Max Avery lived other than the vague
16 notion of Indianapolis, Indiana, from the evidence that they
17 have presented. We don't know -- we do know that on
18 September 3rd there's a video and he's out in that parking lot.
19 I'm not going to suggest to you something absurd and say that's
20 not him, okay? There's -- you know, that's self-evident. What
21 isn't self-evident are the phone taps. That he's the person on
22 that -- on that line. It was odd, it was eerie almost that
23 just before they introduced this exhibit, this 7F where they
24 have got Max Avery's picture on the top and then they have got
25 these lines drawn, there's only one number ascribed to

1 Max Avery being (317) 938-8218, it was moments before that
2 Mr. Baker read the stipulation into the record. It's agreed
3 that that's not -- Max Avery is not the subscriber to that
4 number, okay? So then who has got the burden of proof here?
5 Right there. What do they do? What evidence do they present
6 that they tried to track this down and figure out who it was?
7 Same thing. Mario Martinez is the subscriber from Kentucky.
8 What do they do? What do they do to check out Mario Martinez?
9 Did any of the investigators testify about what they did to
10 find out if it was maybe Mario Martinez? Maybe listen to his
11 voice? That would have been nice. They didn't do that.

12 What did they rely on? They relied upon the fact
13 that Yusef Phillips -- a piece of work there -- Yusef Phillips
14 tells them that that number is Max Avery's. And then he tells
15 Agent Giudice. Agent Giudice says she listened to another tape
16 and compared it, and, you know, "Oh, yeah, that's Max." But
17 those are the only two that testified to it. And there's no
18 objective evidence. That's just subjective. And from people
19 with an agenda.

20 And what is the agenda? Let's look at
21 Yusef Phillips. Isn't it hard to accept that Yusef Phillips is
22 now on his third-round drug conviction, the guidelines said he
23 should get the rest of his life in prison, he gets 300 months
24 consisting of 240 for the drug charges and then another 60 for
25 a gun charge? A gun charge he says he wasn't guilty of. He

1 said that on the stand under oath there. He said it under oath
2 to the judge when he was sentenced. And then he comes up here
3 and says, "Uh-uh, that was my lawyer."

4 Now talk about playing every angle. Look at
5 Defense Exhibit Number 2. That's the Plea Agreement that
6 Yusef Phillips signed with Mr. Baker and his attorney. He's
7 now claiming that his attorney made him do it and that he
8 didn't have anything to do with that gun. Well, one of the
9 things in that Plea Agreement says he gives up certain rights,
10 appellate rights. But there's an exception. One of those
11 exceptions is ineffective assistance of counsel. This guy
12 plays every angle. He plays every angle. He is a master
13 manipulator. His life is characterized by deception,
14 dishonesty. That's what he's all about.

15 What kind of man is he? They cannot prove their case
16 without him. They cannot do it. If you get in bed with a dog,
17 you've got to worry about waking up with fleas, and that's
18 exactly what I suggest they did. They are overreaching on
19 trying to plead -- to convict Max Avery.

20 They don't have a case. They didn't search his
21 house. They didn't search his car. They don't have any drugs.
22 Not any. Not any. They don't have a lab technician like some
23 of these instances because there are no drugs to test. None of
24 this pile that they keep parading out here and has been out
25 here for the whole darn trial, none of that has anything to do

1 with Max Avery.

2 And then they try to tell you that because
3 Yusef Phillips says he would give him 150 grams I think it was
4 a month that you should convict him. He should get another
5 time cut for substantial assistance to the government if he
6 convicts Max Avery. That's how he gets more time off. The
7 third time around. I always thought three times and you're
8 out. Actually, this will actually be six because he got 5Ked.
9 The ones that happen when you're being sentenced. And then he
10 got Rule 35s. That's two of them. And that Rule 35, don't
11 forget, that's the instance where they can come back in and if
12 you give them substantial assistance in the prosecution of the
13 crime or crimes, then they can move -- now, it's still up to
14 the judge, no question about that -- but they can move to
15 reduce your sentence. And it even includes reducing below a
16 mandatory minimum such as the five-year drug charge -- or gun
17 charge that he had. He's got an enormous amount to gain.
18 Everything to gain. His very freedom. I'd suggest that's
19 important to him. I suggest -- heck, he admitted it. I was
20 questioning him on the stand. I said, "You're right now
21 cooperating with the government trying to get a Rule 35, aren't
22 you?" And he says, "Yes." Now, why in the world would anybody
23 believe a thing that man said?

24 Let's try to look at some of the other things about
25 Yusef. Yusef is willing to testify against his brother Ray.

1 Yusef is willing to testify against the woman he was intimate
2 with. Yusef sets up a godson or pseudo nephew, whatever you
3 want to call him, Etrevion Murphy. He's willing to testify
4 against him. And everybody else in sight. Okay? When you
5 have pictures of people going to drug houses and stash houses,
6 it's Yusef and it's Ray. In a few instances other people. But
7 you never see Max Avery in any of those places. You never see
8 Max Avery anywhere but in the government's exhibit that has
9 that September 3rd -- or no -- September 1st, 2017, video.

10 Now, did it seem a little odd to you that Mr. Baker
11 right here stopped playing that? Did that seem odd? It seemed
12 odd to me. You never saw that until later they did it in
13 pieces. The beginning and the end. And he argues that that
14 shows that he had picked up some heroin from Yusef Phillips
15 after he sat in the car with Yusef Phillips for 40 minutes.
16 You do not see in that film any evidence of anything being
17 handed to him. You do not see any evidence of -- oh, here is a
18 good one. They did this a few times. They followed by
19 surveillance either Ray Lee or Yusef Phillips, in this case it
20 would have to be Yusef, from the drug house. They are under
21 surveillance that whole time. That day they were -- heck, they
22 were darn near ready to be done with the case. But when
23 Officer -- or Agent Giudice was on the stand and I said, "Well,
24 what happened on the 3rd when you executed these search
25 warrants and arrest warrants, what was the deal with Max?" And

1 she said, "Well, we didn't have any probable cause to get a
2 search warrant or an arrest warrant against Max." And then I
3 think it was one of the other officers was talking about
4 gathering more in November to execute some more warrants in the
5 first week of November and they didn't have any probable cause
6 then. What surprisingly occurred prior to that, okay? After
7 Yusef proffered twice, September and October. What happened?
8 He makes up a story. He gives them a number. The number
9 doesn't check out. The phone number doesn't check out at all.
10 We don't even know whose car that was out there. We don't know
11 what was in the back of that car. There was no evidence
12 whatsoever.

13 You know in that one case they had brought that
14 camera right in on the shirt and they said, "Look, there's
15 something underneath there." They couldn't do that with Max.
16 There wasn't any package that can be identified as having drugs
17 in it. There aren't any drugs. There's no analysis of drugs.
18 There's no GPS on Max.

19 They were -- they were surveying -- surveilling that
20 area for a long time before that. We know they were doing it
21 in July. We know they were doing it in August. There's one
22 day Max is there and it's on video and they have like a hundred
23 cameras to choose from, a hundred different angles to gather
24 evidence in terms of, you know, "We can see it, look at that,
25 he's handing him money or he's handing him drugs." It's not

1 there. They couldn't get it. They couldn't get it with that
2 many cameras. They couldn't get it because there was nothing
3 to get. And they sure haven't proved it beyond a reasonable
4 doubt. That's for darn sure.

5 Even if you think that the voice is Max Avery, which
6 I contend you can't, that's a conclusion you really can't come
7 to if you think about it hard. Even if you do, the words in
8 that thing don't tell you anything. It's basically gibberish.
9 And their expert, he didn't lend any light to it. Mr. Burns.
10 The only thing that I took from Burns was that, you know, drug
11 dealers are deceitful, distrustful, dishonest, are good at
12 tricking people, are good at hiding the truth. You know, you
13 wonder why perhaps, why did he pick out Max? Well, you
14 remember when they were questioning him about the guy getting
15 shot, Mike Stevens, and they were asking Yusef Phillips?
16 Agent Giudice said, "Well, we asked him, you know, and he said
17 he didn't do it." And it got a chuckle from a few people.

18 But they also brought up a Troy Carter who may have
19 been the subject of another hit. And when I asked Yusef, "Was
20 Mike Stevens and Troy Carter, were they friends of
21 Max Avery's?" He said, "Yeah. Yeah."

22 Now, you've got one number, you've got -- you don't
23 even know what it is, but it's in a phone that they got.
24 That's another thing. Did you believe him when he said there
25 was another phone he had that they didn't get and didn't ask

1 him about? Come on. Come on. These people don't forget to
2 ask questions. They don't forget to track stuff down. The
3 reason they don't have this evidence is it wasn't there to get.

4 Wykena Bradford was mentioned as someone who
5 delivered money to Yusef. Wykena Bradford from I believe it
6 was Indianapolis. Where is she? Who talked to
7 Wykena Bradford? What did she have to say? Did anybody track
8 that down? Does she even exist? We don't know. Why don't we
9 know? Because they haven't given us that evidence. Who has
10 got the burden of proof?

11 You know, everybody before me has talked about that a
12 little bit. I'd like to try to give you a little something in
13 terms of helping you in analyzing what the burden of proof
14 could mean. I'm going to use a little analogy. Think about a
15 pool table. You've got 15 balls on a pool table. You've got
16 seven stripes, seven solids, and an 8 ball. Now just imagine
17 each one of those balls has got a label on it "reasonable
18 doubt." Well, if you want to prove a case beyond a reasonable
19 doubt, you've got to run the table. You've got to get them all
20 off. Get them all off the table. You've got to eliminate the
21 reasonable doubt. Have they done that? Do you think they have
22 done that? They haven't done that.

23 Etrevion Murphy, when he testified, I didn't know
24 what to make of that really, frankly. It's kind of odd. But
25 he did say that Yusef Phillips had told him that he wanted

1 Max Avery to go to trial so he could get a time cut. That's
2 coming from Yusef Phillips otherwise known as Unc in the letter
3 as described.

4 You know, the whole situation here just lacks
5 corroboration of any value. Because how can you value
6 Yusef Phillips' testimony? How can you place any value on what
7 he says? Is there any evidence from anyone about -- that would
8 help you on the question of whether or not Max Avery knowingly
9 joined a conspiracy? It's not there. It's not there. They
10 don't have that. They don't have any drugs. All they have got
11 is Yusef Phillips.

12 I mean, does anybody want to be a part of helping
13 Yusef Phillips get a time cut? They have left too many balls
14 on the table, ladies and gentlemen. And when they do that,
15 that means they haven't proven their case beyond a reasonable
16 doubt. And when they haven't proven their case beyond a
17 reasonable doubt, the only verdict is not guilty. And that's
18 on both counts, okay? That's on 1 and 12. Thank you very much
19 for your attention.

20 *THE COURT:* Thank you, Mr. Frawley.

21 We'll go to Mr. Turpel.

22 *MR. TURPEL:* Ladies and gentlemen, the government has
23 alleged that Andrea Thompson, a fellow citizen, has committed a
24 crime commonly known as conspiracy to distribute controlled
25 substances. The government has to prove that case beyond a

1 reasonable doubt. In other words, they have to present
2 evidence that you believe is sufficient enough and so
3 convincing that you would not hesitate to rely and act on it in
4 making the most important decisions in your own lives.

5 The evidence has to show you that Ms. Thompson
6 entered into an agreement, a conspiracy, knowing what the
7 purpose of that conspiracy was and intended to help advance or
8 achieve its goals. The judge has given you instructions that
9 mere presence is not enough although a slight involvement is
10 enough. But she has to have knowingly and voluntarily entered
11 into it knowing what its goals were and intending to advance
12 those goals. And I'll put it to you, they have not proved that
13 beyond a reasonable doubt.

14 In the government's opening and in their closing they
15 use Power Point presentations. As you're aware, these are not
16 evidence. These are to assist them and assist you in grasping
17 what their theories of the case are and to be persuasive with
18 you.

19 One of the slides in the opening listed all eight of
20 the defendants and the government's position as to what their
21 position in this grand conspiracy was. My client,
22 Andrea Thompson, was listed as a courier and Kalamazoo heroin
23 dealer.

24 Several slides follow. One of them a photograph of
25 Ms. Thompson and Mr. Yusef Phillips exiting 3818 Camelot, the

1 supposed stash house and love nest. There's another photograph
2 that shows the directions and actual wire of funds to --
3 allegedly to Mr. Castro. There's also a photo of a portion of
4 the leases for Camelot listing Andrea Thompson. There are also
5 three photos that indicate what the government believes the
6 evidence against Ms. Thompson might be. They talk about nine
7 phone and text conversations setting up one distribution, video
8 surveillance, wires money to Castro, and lease on the stash
9 house.

10 There's been testimony that there was a relationship,
11 a physical relationship between Andrea Thompson and
12 Mr. Yusef Phillips. There's talk of nine phone and text
13 conversations. You've heard and seen some texts of what they
14 are and what they purportedly represent. You have to interpret
15 those.

16 Exhibit 7G shows Ms. Andrea Thompson with her one
17 phone calling Mr. Yusef Phillips or having contacts, some
18 370-some contacts between her and Mr. Phillips on three of his
19 phones. There's also 11 contacts with Mr. Lee.

20 We have nine phone calls that are allegedly
21 incriminating. We know there was a personal relationship
22 between Phillips and Ms. Thompson. Most of their conversations
23 had to do with personal things. We don't have hundreds about
24 drugs or interpreted as about drugs. Even the ones allegedly
25 about drugs also make reference to her job, to her mom, to

1 other things. And I think in one of the exhibits hers was the
2 only conversations where the minimization that we heard about
3 from one of the witnesses actually comes up. Most of the
4 conversations, most of what Ms. Thompson's connection with
5 Mr. Phillips was had to do with their personal relationship.

6 You've heard and remember that the romantic
7 relationship is the key to Ms. Thompson's involvement with
8 Yusef Phillips. It's alleged that she was a courier. In the
9 presentation from the government in the opening, part of the
10 evidence is they have three individuals' photos there with
11 Ms. Thompson: Mr. Phillips, Mr. Lee, Ms. Meridy. Courier.
12 Mr. Yusef Phillips testified one or two times, I believe, that
13 Ms. Thompson went to Chicago to meet Big or Heavy. This is
14 before Castro allegedly is involved in anything. And we heard
15 that from Mr. Lee.

16 Upon cross-examination my recollection is Mr. Lee
17 indicated all that information about Ms. Thompson being a
18 courier came from Yusef Phillips. It sounded like, my
19 recollection, Mr. Lee, there was really nothing from Mr. Lee
20 really incriminating Ms. Thompson. He didn't deal with her.
21 What deals there were he was told by his brother. Two -- one
22 or two trips to Chicago. Once again, it's Yusef Phillips
23 testifying.

24 Ms. Meridy, what's her involvement with Ms. Thompson?
25 My recollection is outside of what she may have inferred from

1 being told by Mr. Phillips -- and we know his credibility --
2 she met with Ms. Thompson perhaps two times, both having to do
3 with the lease for Camelot. Once signing onto it and then a
4 year later taking it over. That's my recollection of the
5 testimony.

6 Mr. Lee, I believe, did not discuss drugs. We have
7 no testimony from Ms. Meridy. I don't think any of them
8 discussed drugs, testified that they gave drugs to
9 Ms. Thompson. It's all Mr. Yusef Phillips. There's no
10 personal knowledge from Lee or Meridy, who are having their
11 photos there as if they are strong witnesses against
12 Ms. Thompson. They are not.

13 The only evidence as to "courier" would be
14 Yusef Phillips. And remember they had a physical relationship,
15 but Yusef Phillips, my recollection is, initially for some
16 period that we don't know did not even let Ms. Thompson know
17 what his real name was.

18 Heroin dealer. As with many of the other defendants
19 here, we have no undercover buys from Ms. Thompson. We have no
20 drugs from Ms. Thompson. It sounds like her place was not
21 raided. She has no car that has secret compartments. She has
22 one phone. We hear about drug dealers. Some acknowledged drug
23 dealers. They have admitted to it. Mr. Lee, Mr. Phillips,
24 perhaps to some extent Mr. Kirkland. They don't tell people
25 their names. They have multiple phones and change them. They

1 have stash houses. They have secret compartments. They have
2 lots of money. Often stored somewhere because they can't
3 readily dispose of it, put it in banks, et cetera.

4 They use women, I think both Lee and Phillips
5 testified to that, because they are less suspicious. They can
6 get away with more. No one said Ms. Thompson delivered.
7 There's no knowledge of evidence from her house, cars.

8 The stash house. We know that that initially was
9 rented by her, paid for by Mr. Phillips. He didn't want to use
10 his name. She never used some fake name or fake ID. I think
11 we have Exhibit 175 which has numerous pages, initials on many
12 of those pages. It looks like "AT." You'll have to decide
13 that. On signature pages. It looks like "A. Thompson." Not a
14 squiggle. A very legible signature. She's not hiding
15 anything. She's entering into these leases for this place.
16 How many times has she been there? We don't know. Spent the
17 night? A few times. We've got one still of her coming out.
18 There's a little kiss in one still or one video. How often was
19 she there? We've heard testimony she worked and lived in
20 Kalamazoo, Michigan, some 45 miles or whatever from there.
21 There's not extensive exhibits showing her being there.

22 We've heard how Phillips hid things in there. If I
23 was -- I think the way I put it, if I was a maintenance man and
24 went in there, would I see anything? No. Does it mean she was
25 aware of what was in there? We don't really have testimony

1 about that. This is all inference. The lease was in her name.
2 Bold to the world.

3 The Exhibits 141, 142, 143. 141 being I think the
4 directions on where to send this money. 142 and 143 are the
5 money wires. Wires that total I think just under \$4,000. They
6 are sent to a Mr. Castro at the Betty Ford. Hazelton,
7 Betty Ford Rehabilitation Center. There's no evidence drugs
8 were being dealt out of the Betty Ford Rehabilitation Center.
9 There's no evidence really that Ms. Thompson knew that she was
10 sending it for that purpose. There's no evidence she knew
11 Mr. Castro.

12 Once again, she signs. It looks like the same
13 signature on 141, 142, and 143. Boldly signing it. Sending
14 money. Not 200,000, not 300,000, but just under \$4,000, to a
15 rehab center. Where is the proof that this was for drugs, she
16 knew it was for drugs, she was knowingly advancing the purposes
17 of the conspiracy? It's not there. Not beyond a reasonable
18 doubt.

19 She's charged in this conspiracy. As indicated by
20 the Court, the government must prove certain things beyond a
21 reasonable doubt. As I've already said, they have to prove
22 that she knew what was going on, that she participated in that.

23 We've got a lot of -- we have some testimony that she
24 had money problems. She worked. She lived in Kalamazoo. From
25 some of those tapes, if you're to believe them, she didn't seem

1 to know how to sell drugs. She needed some money to pay bills.
2 She has a boyfriend who maybe she knows he sells drugs. He
3 gives her some drugs. I think he admitted to that. Tried to
4 help her out. Is that being part of the conspiracy? Is that
5 an agreement to further the conspiracy? You have to decide on
6 those things.

7 I won't go into great detail as many of my colleagues
8 have already covered the ground of how Yusef Phillips, a man
9 who tried to get others to lie or directed them to, "Hey, you
10 can get a cut by doing this," et cetera, et cetera. I think
11 his credibility is very low.

12 The evidence against Ms. Thompson is more inference
13 than anything. Don't let all those drugs there, the pictures
14 of the money, the guns, things that really aren't connected to
15 her, cloud your vision as to what her role or lack of role in
16 this matter was. She essentially is somebody, I put it to you,
17 that was duped and used by somebody she cared for:
18 Yusef Phillips.

19 She comes into this court, as you've been told by the
20 judge, with the presumption of innocence that attaches to all
21 of us. It's like a weight that goes on that scale of justice.
22 We talked about that in my opening. That weight tips the
23 scales in favor of a defendant.

24 You heard the judge talk about Magna Carta. How in
25 the old days, real old days, 800-some years ago or prior to

1 that, the government might just charge somebody and put them
2 away or make them disappear. But with Magna Carta the jury
3 system, it evolves, we have our rules. Mr. Frawley talked
4 about that. The government has to come with pieces of evidence
5 and put it on the other side of that scale to tip it to prove
6 to you beyond a reasonable doubt to the point where you would
7 not hesitate making an important decision.

8 What evidence do they have that really weighs that
9 much against Ms. Thompson? I put it to you what evidence they
10 have -- and there's evidence -- we agree that she lived in
11 Kalamazoo. Worked in Kalamazoo. But did come to Camelot on
12 occasion to make love to Mr. Yusef Phillips. That she --
13 there's signatures of hers on the lease. There's signatures of
14 hers on some wire grams. But where is the heavy weight that's
15 needed to tip those scales to prove the case beyond reasonable
16 doubt? I put it to you that that doesn't exist and it's not
17 here, and that essentially what we have, once again, is a
18 situation where you have a woman, Ms. Thompson, who loved
19 Yusef Phillips but was used by her [sic]. Helped out a little
20 bit. "Here, you can sell some drugs to cover your bills." But
21 she was duped. She was used. And like many of these other
22 defendants essentially thrown under the bus by this guy.

23 So based on the evidence here, you don't have to
24 believe that she's pure as the driven snow, but she got into
25 something, a relationship, that she should not have gotten into

1 and she stuck with it. You'll see that even at the end, I
2 think Exhibit 124 has these little love bears in there. She
3 was still involved with this guy. But that doesn't mean that
4 proximity amounts to being part of the conspiracy. I put it to
5 you that there's not enough evidence. There's some evidence,
6 but it doesn't tip those scales sufficiently to prove her
7 guilty beyond a reasonable doubt. Thank you.

8 *THE COURT:* All right. Thank you, Mr. Turpel.

9 We'll take a break now for 15 minutes, and then we'll
10 come back and finish with the last defense closing and rebuttal
11 from the government. So get yourselves up for a stretch and
12 we'll be back in 15 minutes.

13 *(Jury exited the courtroom at 3:25 p.m.)*

14 *THE COURT:* Ms. Chartier, did you have something you
15 wanted to address?

16 *MS. CHARTIER:* I did. Just in my closing.

17 *THE COURT:* And get to a microphone, would you?

18 *MS. CHARTIER:* Sure. During my closing one of the
19 jurors was nodding off. And I might not be the most
20 captivating orator on the planet, but I did notice him nod off
21 during another closing as well. Although he did wake up really
22 quickly, but he would nod off as well. I did just want to make
23 a record of that.

24 *THE COURT:* Do you want him off the jury?

25 *MS. CHARTIER:* For Mr. Tatum's benefit, yes, I

1 believe he should be swapped out with an alternate.

2 *THE COURT:* Okay. Which one are you talking about?

3 *MS. CHARTIER:* Juror Number 5.

4 *THE COURT:* In the back row?

5 *MS. CHARTIER:* Yes, sir.

6 *THE COURT:* Mr. Rogers? Okay. I'm happy to hear
7 what other people think, but my own observation is that both
8 the juror in the second chair close to me and Mr. Rogers had
9 their eyes closed from time to time. I think that has happened
10 elsewhere during the trial. But at least in all the occasions
11 that I've seen it's been very brief. And so I don't think
12 anybody has missed any kind of large swatch. And it wasn't
13 just in your closing, as you indicated. I think Mr. Rogers
14 started out that way with the government's closing today. And
15 if I recall correctly, he was or may still be a nighttime truck
16 driver. So he might be having some wakeup moments.

17 But I'm happy to hear what other people think. We
18 have two alternates who are still here. And if anybody else
19 wants to join or oppose, I'm open to hearing the position now.

20 What's the government's position? I guess the
21 request is for Juror Rogers to be excused and replaced with
22 one of the -- who would be the first alternate.

23 Mr. Baker.

24 *MR. BAKER:* Your Honor, the government would be
25 opposed. Jurors nod a little bit during trials. It's

1 something that happens. I think that Mr. Rogers has been
2 paying attention.

3 I've noticed exactly what the Court described. I
4 don't think Ms. Chartier is wrong about what she's seeing. But
5 I don't think there is a lack of information that's getting to
6 the jury here, and if we had to keep all 14's attention all the
7 time, that would not be a demarcation of what we could have for
8 a successful juror. So I don't think that there's been
9 anything in terms of demonstration or what's been made on the
10 record that he should be taken off.

11 *THE COURT:* All right. Mr. Lombard.

12 *MR. LOMBARD:* We'd oppose the request as well,
13 Your Honor.

14 *THE COURT:* All right. Mr. Phelan.

15 *MR. PHELAN:* I remember a judge telling me at one
16 point in time "Be careful what you ask for. You might get it."
17 I'm going to stay neutral.

18 *THE COURT:* Mr. O'Keefe.

19 *MR. O'KEEFE:* Your Honor, I did notice Juror Number 5
20 nodding off quite a lot. It wasn't just during Ms. Chartier's
21 closing but other counsels' closings. He appeared to perk up
22 after the break. And when I addressed the jury, he seemed to
23 be awake the whole time. But I believe when Ms. Chartier was
24 finishing up her closing, he may have bounced his head off the
25 wall. I would concur with her objection. He was very, very

1 sleepy.

2 *THE COURT:* All right. Ms. Howard.

3 *MS. HOWARD:* I would also concur with the objection
4 by Ms. Chartier. I think it's above an unacceptable level,
5 so . . .

6 *MR. FRAWLEY:* I concur as well. That's all I need to
7 say.

8 *THE COURT:* All right. That's Mr. Frawley.
9 Mr. Turpel?

10 *MR. TURPEL:* Your Honor, I will concur. He has been
11 nodding off even during jury selection.

12 *THE COURT:* Mr. Hills.

13 *MR. HILLS:* I haven't noticed it that much, but if
14 he's nodding off and sleeping that much, I would concur with
15 Ms. Chartier.

16 *THE COURT:* Well, I'm going to reject the motion for
17 now, because at least in my observation what I saw was not
18 anything more than occasional. I didn't see the head bang if
19 that happened. I have seen other jurors from time to time,
20 most notably Mr. Wood in the front row, do the same kind of
21 thing, but the eyes rarely stay closed for any length of time,
22 perk up quickly. And that's what I thought was going on with
23 Mr. Rogers today too.

24 So I think if we made, you know, closing the eyes or
25 even a jaw drop or a head bang the standard, we'd probably

1 never finish a jury trial. Because as scintillating as you all
2 have been -- and honestly, you have been good, all of you
3 have -- it's tough to sit there all day. And I'll tell a
4 story, because Dutch guys like stories too, not just Irish. If
5 I already told you this during this trial, just say "You
6 already told me and I need to go to the bathroom."

7 But my dad is 98. He was born in 1920. A son of a
8 minister in the Christian Reform Church. And I used to
9 complain as a kid about going to church twice, you know. At
10 night especially when they'd dim the lights, at least in the
11 church I went to. And I thought, you know, it was a great
12 invitation to sleep, which I did. But -- and so did some other
13 people. And we're dimming the lights, we're turning the lights
14 up, we're doing all of that. His response to me was, "You
15 don't know how good you have it. I had to go morning, night,
16 and in the afternoon to a Dutch service." And then I thought
17 as we were listening all afternoon, I think if I talk to him
18 later this week, I go visit him usually on the weekends, he'd
19 have to admit that what the jury is doing today is worse than
20 anything he did as a kid. Not because you're bad, you're all
21 good, but just because sitting through speeches for an entire
22 day is exhausting work. And that's, I think, one reason we
23 have a group process with the jury.

24 If somebody is really sleeping, sawing wood, missing
25 out big chunks, I excuse them. I don't think this one rises to

1 that level. But I appreciate everybody's observations.

2 Let's go as fast as we can on the break. We've taken
3 a little bit of time, but I know it takes time to get people
4 back and forth. So no more than 15 minutes. Hopefully we can
5 do it in a little less.

6 *THE CLERK:* Court is in recess.

7 *(Recess taken at 3:31 p.m.)*

8 *(Jury entered the courtroom at 3:45 p.m.)*

9 *THE COURT:* All right. We're here for the last two
10 closings. The last one of the defense and the final rebuttal
11 of the government. And we'll turn it over to Mr. Hills
12 whenever you're ready.

13 *MR. HILLS:* Thank you. We're getting closer. I'm
14 number 9 on the hit parade today. I can't imagine what you're
15 going through. So I'll get right to it.

16 I represent Aaron Cox. He is charged in Counts 1 and
17 14 in this Indictment, the Second Superseding Indictment.
18 Count 1 is the conspiracy count. Count 2 is the possession
19 with intent to distribute count. Now, when I get to it, I'm
20 going to go in reverse order. Like I think Ms. Howard did,
21 went in reverse order. And I'm going to talk about Count 14
22 first and then I'm going to come back to Count 1.

23 Now, as a criminal defense attorney, I would be
24 remiss if I didn't talk about what I consider the cornerstones
25 of our criminal justice system. You've heard it seven times

1 already, so I'm going to go really fast through this.

2 The cornerstones. Presumption of innocence. The
3 burden is always on the government. And they have to prove
4 their case beyond a reasonable doubt. There, I said it. I had
5 to say it. You've heard it umpteen times, so I'm not going to
6 dwell on it. The judge has already instructed you on it.

7 All right. Count 14. That's the possession with
8 intent to distribute cocaine count. This is from
9 September 2nd, 2017. On this particular occasion what do we
10 have? We have the Woodland Mall video. We've got that. And
11 we've got telephone calls. Several of them. On September 1st
12 and September 2nd. That's it. A series of telephone calls.
13 And you've got suspicion, right? That's what you've got.
14 We've got some suspicion.

15 So what do you do to verify that? Well, what else do
16 they have on that day, September 2nd, 2017? They have got
17 surveillance. And they have got a team in place on that
18 particular day. I tried to figure out who was there. I asked
19 that question multiple times. I never got an answer to it. I
20 can't tell you that, and the government can't tell you that at
21 this particular time or any time. You're never going to hear
22 it. We don't know who was there. I think I asked
23 Chad Preston, or he was one of the officers that I asked, "Were
24 you there?" "I might have been." "Were you the one that
25 called?" "I could have been. I might have been. I don't

1 know." We don't know.

2 I asked Special Agent Guidice. She confirmed that
3 she had a team in place. And we know that because there was a
4 call. They were up on the wire as they say. So they knew that
5 Ray Lee was going to go to the Woodland Mall, so they get
6 ready. They have done this over and over and over and over
7 again repeatedly throughout the summer of 2017. And so they
8 have a team there.

9 You heard testimony about a three-man team that they
10 use and that they followed Ray Lee all over the place. All
11 right? So we know that they had a team in place. We know that
12 they had the plate. All right? Up there I think I put up a
13 picture -- you can't really see it -- but they zoom in on the
14 plate. By this time in history, September 2nd, 2017, the
15 Woodland Mall security people are trained in that, to zero in
16 on the plate. So they had the plate. And up there I also put
17 up who the plate goes to. The plate goes to Aaron Cox. It
18 gives his address, 3061 Plainfield Ave.

19 So they have got these phone calls on the 1st and
20 then most of them on the 2nd. They have got a meeting at the
21 Woodland Mall. And they have got a team there that has the
22 license plate. All right? So they have got this whole thing
23 going on. They have got this whole investigation going on.
24 And at this particular point in time they have got 20 search
25 warrants ready to go. They have got 17 arrest warrants ready

1 to go. And they have got a team in place at the Woodland Mall
2 and they have got a plate. So what do they do? They have got
3 suspicion. What do they do to verify the suspicion?

4 I'm here to represent Aaron Cox, and Aaron Cox is
5 charged in Count 14, so I want to know what they did to verify
6 their suspicion that this was a drug transaction. Well, what
7 could they have done? All right? I asked one of the officers,
8 I think it was Mesman, about traffic stops. You can stop a car
9 basically for anything. There are so many traffic laws that
10 you can stop a car. And I think I asked one of the other -- a
11 K-9 handler that did some searching, I asked him, and he
12 verified that too. Can you stop? Yes, for a traffic law
13 violation. You don't need probable cause. You don't need a
14 search warrant. You can stop. So you do a traffic stop. All
15 right? And if you've got all of this staged, we had three
16 officers testify that were K-9 handlers. You call in a dog.
17 You have it ready to go. They had a surveillance team there,
18 coordinate a stop. Bring your dog in, right? Do a search.
19 You don't need a search warrant. It's what's called -- I think
20 they called it a free-air sniff. Free-air search. Bring the
21 dog, go around the vehicle. If he hits, okay, you verify your
22 suspicion. If he doesn't, he doesn't. If you get in, you get
23 consent to search, you can search. You verify your suspicion.

24 All right. They didn't want to blow the case right
25 there is what they want to say. All right. That doesn't have

1 anything to do with Aaron Cox. That's on them. That's on the
2 government. If they didn't want to do this, they didn't want
3 to verify their suspicion, that's on the government. They
4 decided not to do it.

5 What else could they have done? The trash pulls.
6 This is an officer who I found on the internet so you could see
7 pulling the trash. I'm sure that they didn't do it exactly
8 this way. I'm sure that they were slicker about it. But they
9 could have done that. We've had -- I mean, they were -- the
10 trash haulers on the regular crew for Ray Lee, they could have
11 done it. They chose not to. And they could have potentially
12 confirmed their suspicion that Mr. Cox was involved with drug
13 dealing.

14 You had -- and I wanted to make sure I got this out,
15 and I got it out of Detective -- Special Agent Burns that on
16 down the line, I think it makes sense and everybody would
17 realize this, but I wanted to make sure we had it on --
18 testimony on it -- that not just people like Ray Lee and
19 Yusef Phillips have remnants, have kilo wrappers and cutting
20 agents and gloves and all of that kind of stuff. But if
21 somebody, according to Ray Lee, is delivering to Aaron Cox kilo
22 quantities of cocaine, they are going to also have those types
23 of things in the garbage. So verify your suspicion. They
24 didn't.

25 Okay. They are going to go and they are going to do

1 their search warrants, okay? Do a search warrant. Right? You
2 heard testimony from several of the officers about getting and
3 obtaining a search warrant. You do it -- you get an affidavit,
4 you send it, and you receive it. You get your search warrant.
5 They had 20 already. If there's enough suspicion here that
6 we're going to put this man on trial, get a warrant. Serve the
7 warrant. You're doing 20 already. I think
8 Special Agent Guidice indicated they had 200 to 300 officers
9 ready to go, ready to search. They had 20. One more. Verify
10 your suspicion. They could have done it. They didn't.

11 So at the end of the day with this particular
12 incident we don't have paraphernalia, gloves, scales, cut,
13 money, drugs. No suspicious activity around his home. No
14 witnesses saying that he sold drugs. Nothing like that.

15 And when we talk about Count 14, possession with
16 intent to distribute cocaine, they are going to ask you --
17 there's going to be a verdict form that talks about a weight,
18 and that weight is above or below 500 grams. All right? It's
19 half a kilo. And if you believe -- and I'll get to more of
20 Ray Lee, the Ray Lee show a little bit later on, but if you
21 believe Ray Lee, I think it's his third statement to the
22 officers, where he indicates, "Oh, a half a kilo." All right?
23 "I delivered him a, a half a kilo." All right? So we take his
24 word for it. Because on this count we have no drugs. We have
25 nothing. Nothing to weigh, nothing to look at, nothing to

1 test. And that's why I think the lab guy was important here.
2 Because I asked him a silly question. The question is -- say
3 this is a kilo, right? You get a box or a Saran wrap, tape,
4 whatever, and it looks like a kilo of drugs, right? You get
5 that in the lab and you look at it and you pick it up and say,
6 "Okay, yep, this is heroin. This weighs a thousand grams.
7 It's a kilo." There you go. Do you ever come in and testify
8 to that? No. Why? Well, he's a scientist. He's going to
9 test it. I think he tested on three machines he put this thing
10 through to test what they were.

11 Agent Giudice got it wrong. She thought what they
12 seized in the truck was all cocaine. No, she's wrong. That's
13 why they send it to the lab to test it, right? And to weigh
14 it. He had a -- he used his scale. He indicated that his
15 scale is calibrated. Calibrated I think he said internally
16 every day. Every month it's calibrated with certified weights.
17 Every year it's calibrated with separate certified weights,
18 right? And so none of the drugs that were seized -- we have
19 these boxes over here full of drugs -- none of them relate to
20 Aaron Cox. None of them.

21 But I thought I'd pull one of the labs specifically
22 in Exhibit 168A, and I took a close look at that, and that
23 particular package weighed 503.4 grams with the packaging. All
24 right? Here is your half a kilo, right? And then they take
25 it -- the Dr. Augustine took it out and it weighs 460.

1 Significantly shy of half a kilo, right? So this is kind of a
2 glimpse of how this is done, right?

3 You heard lots of testimony that you get the drugs,
4 you pull it out of the package, you cut it up, you get more
5 mass to it, more weight to it, and then you sell it and you
6 make more money. On the other end, they short -- they give you
7 short on the weight. Here it's packaged, it weighs over
8 500 grams, so it's short on the weight when you open it up and
9 the actual cocaine or heroin or whatever it is, it's short. So
10 you're going to be called upon to find beyond a reasonable
11 doubt that there's over 500 grams of cocaine, which you don't
12 have, has never been weighed, has never been seen. That's even
13 if you get past the possession with intent to deliver where
14 they don't have cocaine, they don't have anything except for
15 Ray Lee.

16 So they don't have any verification of their
17 suspicion except for Ray Lee. And we've heard a lot about
18 Ray Lee. That's Count 14.

19 Count 1 then is the conspiracy. All right? Now, the
20 conspiracy -- Mr. Cox is charged in the overall conspiracy from
21 2013 to 2017 of receiving and dealing cocaine. Now I want to
22 go back, and Agent Giudice indicated on her direct exam that my
23 client was indicted in November of 2017. And he was. But he
24 was not indicted on the entire conspiracy. He was indicted on
25 November 8th, 2017, in a stand-alone indictment. I put up

1 there -- I probably shouldn't have put PWID, but that's short
2 for possession with intent to distribute. And I put 500 grams
3 or more because that's what you're going to be asked to decide.
4 So originally he was charged with PWID, possession with intent.
5 Now that's Count 14 on this whole big Second Superseding
6 Indictment.

7 And on November 8th -- this is important -- on
8 November 8th, 2017, they had the phone calls. They had -- they
9 had them in realtime. Right then on September 2nd, 2017, they
10 had the phone calls. They were listening to them. They were
11 recording them. They were transmitting it to their agents to
12 go out to the Woodland Mall. They had all of that.

13 They had the Woodland Mall video. They had that in
14 realtime also. So you can tell somebody is on the joy stick
15 dialing it in, zooming it in, zooming it out.

16 They had a Camelot video. I put that in quotes
17 because they actually did not have a Camelot video. You see in
18 a lot of the Camelot videos going in, going out. Ray Lee going
19 in, coming out with something. You won't see that in regard to
20 Aaron Cox and Ray Lee on this particular day. There isn't one.
21 I put it in quotes because they thought they had it. That's
22 what they thought they had. That's what Officer Schafer, the
23 co-case agent on this case, testified. That's what he put in
24 his report, that they had the electronic surveillance at
25 Camelot on that particular day, but they didn't. And they

1 don't. And he says because the thing went out of batteries or
2 whatever reason it is they don't have it. All right?

3 Now, they say, okay, we've got this GPS. And I'm
4 sure that Mr. Baker is going to put that up, right? So we've
5 got GPS instead of the Woodland -- or instead of the Camelot
6 video. And they have the map. All right? And on that map
7 you'll notice that there are no -- there are no addresses on
8 that particular map of the houses or apartments or whatever it
9 is. But you'll also note on that map that they have a bunch of
10 stop signs. I think four stop signs on that particular map.
11 And they don't have any times for any of those. When the
12 vehicle may or may not have been stopped.

13 And also in Camelot you've got 3818, which is the
14 stash house, but he's also got his sister and his nephew living
15 at 3780 Camelot. And that's why this video is so important,
16 right, to their case? You see him coming in and coming out.
17 Because, all right, he's going into 3818, the stash house.
18 He's not going in over here to 37 -- what is it --
19 3780 Camelot, which is his sister's house, sister's apartment,
20 with the nephew. All right?

21 Regardless, they -- so I put it up there. They
22 thought they had it. They assumed they had it. All right?
23 Just like they assumed that there was a drug transaction at
24 Woodland Mall. They assumed it. They didn't verify it. He
25 assumed that he had this video. Come to find out, as we're

1 prepping for trial, he didn't have it. They had his plate.
2 That's Aaron Cox's plate. They had his plate. They had his
3 address.

4 They had Ray Lee, right? On November 8th, 2017, when
5 they do the stand-alone indictment on Aaron Cox, they had
6 Ray Lee. He had testified at that time. Ray Lee came in on
7 the 3rd and talked to them, and I'll get to his statements. He
8 came in on the 25th, talked to them of September, he came in on
9 October 12th and talked to them. And specifically on
10 November 7th, 2017, he testified in front of the grand jury at
11 10 something in the morning. Alexis Guidice testified that
12 same day on November 7th at one something in the afternoon.
13 Alexis Guidice testified on November 8th, 2017, for the
14 indictment. Specifically a stand-alone indictment. And what
15 did she say? They didn't put him in the conspiracy. Because
16 they don't have any corroboration. No corroboration for
17 Ray Lee.

18 After all these other defense attorneys have told you
19 and you sat through this trial, you listened to Ray Lee and
20 Yusef Phillips, you know that they don't have any credibility.
21 You know that you need some support, you need some
22 corroboration. It's instinctive, it's intuitive. You know
23 that. But -- and I think Alexis Guidice knew that too, right?
24 But she also knew that the Court, that the law, the judge is
25 going to instruct you not to convict on unsupported testimony

1 unless you believe it beyond a reasonable doubt. He's already
2 read that instruction to you. There's more to it than that,
3 but this is the basic gist of it. It's a cautionary
4 instruction. Somebody like Ray Lee, put Ray Lee's name right
5 in that instruction. Do not convict on unsupported testimony
6 of Ray Lee unless you believe him beyond a reasonable doubt.
7 And that's why he wasn't put in this grand conspiracy, because
8 they didn't have any corroboration. Not then and not now.

9 So in April of 2018 -- this is not the stand-alone
10 now -- now he's put into what we're here for, the Second
11 Superseding Indictment. The conspiracy. But there's nothing
12 new.

13 How -- what did they have? And I asked
14 Alexis Guidice this. She testified as to what Ray Lee
15 testified on November 7th. So she comes in to get him into the
16 Indictment just rehashing Ray Lee's testimony. Nothing new.
17 Ray Lee didn't come in to testify. There's nothing new. Zero.

18 This is -- you've heard that you can indict a baloney
19 sandwich? That's how it's done. Right over here is your
20 living, breathing baloney sandwich. He was indicted on nothing
21 new.

22 And it reminds me actually of Swain. So he's
23 charged, he's indicted, he's coming around, coming around the
24 corner, coming up on trial and then, bam, wham, charged in the
25 conspiracy. The greater conspiracy, right?

1 And Derrick Swain -- why does it remind me of
2 Derrick Swain? Derrick Swain doesn't have anything to do with
3 Aaron Cox. None of the other six cooperators do. But
4 Derrick Swain came in, and he's "What if I lied in my proffer?
5 What if I lied in my proffer?" as Ms. Chartier was talking
6 about. And he gets up on there and he has a choice, right? Go
7 along with the proffer as he's proffered with the government or
8 there are consequences. It reminds me of that.

9 So we have Yusef Phillips and we have Ray Lee. They
10 kind of come as a pair, I think. Yusef Phillips I consider the
11 trainer. And we've seen that throughout, right?
12 Yusef Phillips has a history. He's well-versed in how this
13 works, how this game is played. You could tell, you know, how
14 the Yusef Phillips and Ray Lee drug-dealing operation went.
15 Clearly Mr. Phillips was in charge of the situation. I don't
16 think there's any dispute about that.

17 But Yusef Phillips back in the nineties was indicted
18 and he -- that's where he learned about proffers. He
19 proffered. He went to the grand jury. He testified in trial.
20 He got himself a 5K. That's your reduction that we've already
21 seen. That they get the reduction before. Before sentence or
22 at sentence. And then the Rule 35. He got one of those.
23 That's a rare event. Rule 35 is after. That's what comes
24 after when you all go home. That's what they are really
25 seeking now.

1 And Phillips is the master. He's the trainer.
2 Right? He's the trainer. And we know they are communicating,
3 and other attorneys have gone through that, and so I won't
4 rehash all that. But one of the things I don't think anybody
5 brought up yet, which I thought was amazing, that after
6 Yusef Phillips comes down here and does his thing, right,
7 testifies, then the next day -- was it the next day or the day
8 after? Whenever Ray Lee came down to testify -- they are both
9 in Newaygo, we know that, how they ride down here on buses and
10 they go back on buses, and they stay here in some holding cell
11 I'm sure. Well, they brought Yusef Phillips back down, the
12 trainer, to ride with his brother, to make sure he's doing what
13 he's supposed to be doing. And on the way back, I think it was
14 Tony Kirkland that said, "Yeah, they were sitting together and
15 Ray Lee said, 'Yeah, I did what I was supposed to do,' " among
16 other things. So they are together in this. You can't
17 separate them.

18 And I almost forgot, somebody indicated their
19 sentencings were on the same day, so they are going to ride
20 down together for their sentencing.

21 Their Plea Agreement, I guess I put that up there,
22 there was also testimony about that. They also signed their
23 Plea Agreements on the same day. Right? Do you see a pattern
24 happening with the trainer and his little -- not little
25 brother, I guess it's his big brother.

1 Cooperators. Right? None of them say anything about
2 Mr. Cox, save Ray Lee. Not Phillips. Not Meridy. Not Swain.
3 Not Cervantes. Murphy. Not Murphy, but I want to talk about
4 Murphy for a minute.

5 Murphy is interesting to me because I think you get a
6 glimpse at what the defense has been saying in cross-examining
7 these cooperators. What this game is. What Yusef Phillips
8 knows so well. Yusef Phillips trained Murphy. Yusef Phillips
9 trained him in the drug trade, was grooming him I think may be
10 the term. And also grooming him in how to cooperate. What to
11 do. The game is to get as many people as you can to testify
12 about and hopefully they go to trial. Right? That's how it
13 works. You cooperate, and if they go to trial, you testify,
14 you get your Rule 35. That's how it works. Right? And then
15 we heard it from Mr. Murphy on the stand that that's how it
16 works and that Yusef Phillips is the trainer and was training
17 him.

18 And Kirkland -- Murphy had nothing to do with --
19 Kirkland is interesting to me. Kirkland, nothing about
20 Aaron Cox. Right? Says nothing about him. But he's
21 interesting to me, and I think Ms. Howard is the one that
22 pointed out all his inconsistencies in how he was testifying.
23 From when he was with the agents in his proffers and all this.
24 But -- and he says, "Well, my calculations got better." Right?
25 His calculations got better over time. Until he's up here.

1 He's with -- originally he's here, he has his proffers, he
2 meets with the agents, he does his thing, he gets on the stand,
3 and now his calculations are better. Even though I think he
4 testified that he's -- he uses heroin and cocaine and alcohol
5 and whatever else, right? But his calculations are getting
6 better with time. Regardless, none of them say anything about
7 Aaron Cox.

8 I started out with the evolution of Ray Lee, and I
9 figured it would get better with trial, and I was right. So
10 Ray Lee starts out September 3rd, 2017. And he's arrested and
11 called into the room to wherever he's being interviewed at, I
12 think Grand Rapids Police Department, by a couple of officers.
13 And two things that are interesting about this, I believe. You
14 see Ray Lee give some very brief information. Doesn't give a
15 whole lot. But what he does give is a lie. You know, right
16 out the gate he gives the 3780 Camelot address, which is his
17 sister and his nephew, throws them under the bus too. Right?
18 You want to go search someplace, my home is at 3780 Camelot.
19 Go search, you know, their house. Right? So we get to see the
20 kind of guy he is right out the gate. He could have elected to
21 say nothing, but instead his instinct is to lie. Right?

22 Also important about this, he gets to know -- he gets
23 to start to know the game, because the officers are laying out
24 pictures. I need to know this and this and this and this. So
25 he knows what they want.

1 September 25th, 2017. This is his first proffer.
2 Now he's got an immunity deal. Now he can come in, now he can
3 tell the government everything about everything. About
4 everybody. Pictures, et cetera. Right? And the last guy that
5 he had supposedly dealt with was Aaron Cox for -- well, at this
6 time -- I think the next proffer it's a half a kilo, but in his
7 grand jury it's kilos and kilos, right? So kilos and kilo guy,
8 and the last guy he dealt with, three and a half I
9 believe hours they are with him. Not a mention. Doesn't say
10 anything.

11 October 12th, 2017, they come and see him again. And
12 this is important. This is the first time that Ray Lee
13 mentions Aaron Cox. And he mentions him, and I think I asked
14 one sentence, one or two sentences, a half a key. Right? A
15 half a key and a key for \$35,000. And Special Agent Guidice
16 said that always she has a photo lineup -- not a photo lineup
17 exactly, but it's a series of photos, and some of them are
18 suspects, some of them aren't, so it's fair. But in this one
19 they say Aaron Cox. Right? And we don't know exactly what was
20 said. We know that he had just one big photograph and then a
21 couple photographs of the brothers Goree. But certainly no
22 spread, right, of photographs. And we don't know exactly how
23 it was presented because they don't record those. They record
24 everything else, but they don't record the proffer interviews
25 when these people like Ray Lee and Yusef Phillips are in there

1 testifying to the agents. It's all set up, right? In advance.
2 They don't have to scramble like at the Woodland Mall. They
3 can bring their equipment and set it up and record it, but they
4 don't. So we don't have that. What we do have is one time a
5 half kilo.

6 November 7th, 2017, testifies in front of the
7 grand jury. Ray Lee testifies in front of the grand jury at 10
8 something in the morning. And testifies -- now he's moved from
9 a half key to kilos over from 2014 to 2017. Every month a
10 kilo. Or a half a key. Every month. Okay?

11 October of 2018, last week, or I don't know when it
12 was. Last week or the week before that, whenever he came in to
13 testify. That didn't make sense, right, because just out of
14 the blue you meet somebody and, "Okay, I'll start buying a
15 key." So now he's got to testify, and he testified here after
16 riding down, right, with Yusef Phillips. No, you've got to
17 start out slow. That's how you start out. So now we have his
18 testimony changing.

19 Now we start out in ounces for a while and we lead up
20 to kilos. Right? So that's how it would work. But on the
21 government's closing they indicated to you that it was kilos
22 from -- kilos and half kilos from 2014 to 2017. Well, that was
23 his grand jury testimony. That wasn't what he told you. I
24 think one of the other attorneys got into -- I think it was
25 Ms. Chartier that got into how much he was charging. Okay.

1 He's testified here in front of you that he was charging 38,
2 39 thousand dollars for a kilo, but now he's giving it at cost
3 to Mr. Tatum. Right?

4 And I just have to mention that on Mr. Tatum, all
5 right? He's going to give him a kilo at cost and then he's
6 giving testers of heroin? What sense does that make? Right?

7 So then I ask him about Cox. Yeah, so now he's
8 giving it to Cox for \$35,000 because that's what he said
9 before. And now he says for the first time ever, "Oh, that's
10 stepped on. That's cut." Okay. So that's different. Never
11 said anything about that before.

12 So this is how a witness is made and this is how
13 Mr. Lee evolved. Like Kirkland said, "My calculations got
14 better."

15 So this conspiracy is unsupported. Right? It's
16 unsupported, but it's not unsupported for lack of trying. This
17 investigation rivals any CSI or one of those shows that use all
18 these things. They started back in 2012, I think, with the
19 Grand Rapids Police Department, they started getting
20 information on this drug-trafficking organization. They had
21 confidential informants on the ground. That's what this
22 represents. I found these on the internet, the little
23 silhouettes with question marks in their heads.

24 We don't know who they are. They are confidential
25 informants. They are doing controlled buys. They are

1 street-level knowledge. And then we have all the agencies
2 involved in this thing. And they all come and they all bring
3 their resources. They all bring their intel. We had from
4 several narc units that all have people on the ground,
5 street-level, and yet nothing. No confidential informant. No
6 controlled buy associated with Aaron Cox over the whole course
7 of this conspiracy. And he's supposedly this big kilo dealer
8 individual.

9 Their surveillance. I'm sure they were a little bit
10 slicker than this, you know, but they had had surveillance
11 going on for a long period of time. Three-man teams.
12 Utilizing that as well as their GPS trackers to follow Ray Lee.
13 I think Ms. Guidice indicated they had multiple cars on GPS.
14 And nothing associated with Aaron Cox. And I -- regarding this
15 car-tracker business. I just asked -- you see the car tracker
16 in a few of their exhibits. But I also asked them about just a
17 random few people. I think it was Kim Foster, Mr. Marshall,
18 and one of Lee's girlfriends. They tracked them, kept track of
19 it, they had them at the -- her -- Kim Foster's house,
20 Kayode Marshall's house, and his girlfriend's house multiple
21 times throughout the course of their investigation. And again,
22 never is this tracker seen on Plainfield where my client lives.
23 It's never seen associated with my client. It's a lack of
24 evidence.

25 The phone. Significant phone information in this

1 particular case. We've got trap and trace. GPS ping. The
2 wiretaps. The only time that anything is captured with my
3 client is September 1st, one call on September 1st and
4 September 2nd, 2017. That's it. Going back on this entire
5 conspiracy, my -- Mr. Cox, my client, is never picked up on any
6 of their seven phones that they had wire on.

7 Toll information. This is the -- all the phones,
8 phone calls, that they had thousands and thousands and
9 thousands. And the government is going to get up and say,
10 "Well, Mr. Cox's phone just started on September 1. That's why
11 they don't have them going back."

12 Well, they had Mr. Lee. They had intel analysts,
13 phone analysts, Ms. Mesyn -- I hope I'm not getting your name
14 wrong, but I think that's how she pronounces her name -- to
15 scrub, as I call it, the phone records. And they had witnesses
16 to help them.

17 Well, this number, this number, this number, I see on
18 some of their exhibits they had six cell phones for Mr. Lee.
19 And all the toll associated with that. But yet nothing,
20 nothing with Mr. Cox.

21 And the Cellebrite. They had 20 search warrants
22 executed on September 3rd, 2017. We only heard about a handful
23 of them, right? But out of all those, I think
24 Special Agent Guidice indicated they had a lot of phones out of
25 there, right? So they are scrubbing all of these phones. And

1 Cellebrite is a download of what's on the phone. That's
2 phone calls, phone messages, the text messages, whatever is on
3 the phone. Pictures. Nothing. Out of all of those search
4 warrants in this conspiracy, right, out of all of that, nothing
5 connects it to Aaron Cox. Nothing. It's the lack of evidence.
6 Reasonable doubt can be borne out of the evidence or the lack
7 of evidence.

8 Special Agent Guidice. And I put it up here. She
9 testified under oath on November 8th, 2017, that there was no
10 corroboration. She's right. She's right. There's no
11 corroboration. No physical surveillance going back from 2013
12 up to September of 2017. Wire transfers, fake businesses.
13 Nothing on the tracking. No phone. I could go on and on and
14 on. Right? They have got nothing.

15 On September 2nd they didn't verify it. They didn't
16 verify the possession with intent to deliver. They have
17 nothing to weigh. Nothing to show you. Going back on the
18 conspiracy, they have got nothing new. They have got nothing
19 throughout that whole thing except Ray Lee. That's it. Do not
20 convict on the unsupported testimony of Ray Lee. Thank you.

21 *THE COURT:* All right. Thank you, Mr. Hills.

22 And we'll go to the government's rebuttal, which will
23 be the final argument of the day.

24 *MR. BAKER:* Let's talk about support for the
25 witnesses we offered to you. Each one of the witnesses that

1 was on the stand that we called and relied on in our closing
2 was supported by the phones. You heard some argument today,
3 and you will hear argument from me, and I believe you'll hear
4 instruction from the judge, and you already have it, and you'll
5 have it back with you, that what you're supposed to evaluate is
6 the evidence you saw in court. What you heard and saw and what
7 was testified to in court.

8 Each of defense counsel have wanted to spend a lot of
9 time about what didn't happen in court. What didn't happen
10 over time. What didn't happen in the investigation. But what
11 you're called to do and what your job is to do and what you are
12 sworn to do is to evaluate what was present in front of you.

13 I suggest to you, ladies and gentlemen, that if
14 Justice Jackson and the Nuremberg prosecutors had had wiretaps,
15 they would talk differently about the witnesses they called.
16 Because what you had in this case was a wiretap on each one of
17 these defendants.

18 There are interceptions with regard to every one of
19 the defendants in this trial. And you know that they are the
20 speakers on the phone calls not only because Ray Lee told you
21 and because Yusef Phillips told you and because
22 Salvador Cervantes told you and because Toranita Meridy told
23 you but because Special Agent Guidice told you.

24 There were suggestions from each one of these
25 defendants that it was a game. That Yusef Phillips knew the

1 game and he taught as many people as he could. Ladies and
2 gentlemen, this is not a game. I've heard the drug-transaction
3 game described that way, but this is a court of law, and you
4 are sworn to make a decision beyond a reasonable doubt in the
5 course of the case. And we are not conducting a game here.

6 I suggest to you that if you look at the evidence
7 piled on the two dollies in front of you, there is absolutely
8 no evidence that anyone, much less Yusef Phillips and Ray Lee,
9 outfoxed Special Agent Guidice or Task Force Officer Schafer or
10 the DEA or the government in this case.

11 Yusef Phillips has been sentenced to 25 years in
12 jail. Ray Lee has been sentenced to 16 1/2 years in jail.
13 They are cooperating with the government pursuant to their
14 Plea Agreement. If you have a problem with their cooperation,
15 blame the government. And specifically you should blame me.
16 But they were called to testify. So let's talk about the
17 support for their testimony.

18 The government didn't pick Yusef Phillips and Ray Lee
19 to be its kilogram customers for cocaine and heroin in
20 Grand Rapids. Alex Castro picked them.

21 The government didn't pick Yusef Phillips as their
22 supplier. Max Avery and Dante Howard and Andrea Thompson
23 picked Yusef Phillips.

24 The government didn't pick Ray Lee as its supplier.
25 Aaron Cox, Solon Tatum, Erika Atkinson, and Michael Nelson

1 picked him as their supplier.

2 The Court has instructed you that you're supposed to
3 treat the government's witnesses when they have cooperation
4 deals with caution, and you should. You need to look for
5 corroboration for those witnesses. You need to look at what
6 they have told you and hold it up. As you weigh the evidence,
7 how can you believe what they are saying? In the course of
8 this case, ladies and gentlemen, the reason you can believe
9 these witnesses is because of the phones. It wasn't just them
10 saying that's who they are talking to. And it's not just
11 Special Agent Guidice. If you look at these phone calls and
12 you watch the surveillance, these defendants set up their own
13 meetings. They talked about the things that are corroborated
14 by other witnesses that have testified and surveillance that
15 was seen.

16 Max Avery, just to give you an example, who
17 challenges whether or not he's the person on the phone, for his
18 phone number, the phone number that he uses, though it's
19 registered to a Mario Martinez, and if you look at the
20 registration for each one of the phones, and you've heard about
21 so many phone numbers in this case, but you'll see in the
22 stipulation none of them is registered to any of these
23 defendants because drug dealers do not register their drug
24 phones in their own names. None of these people did.

25 But at 3:59 on September 1st, 2017, Yusef Phillips

1 sent a text to Max Avery, and that text said, "I'm here." And
2 if you look at the video at 3:59 on September 1st, 2017, in the
3 parking lot of the Woodland Mall Max Avery gets into
4 Yusef Phillips' car.

5 And if you listen to the phone calls that we heard in
6 the course of this case and you align those phone calls with
7 the dates and times where the communications happened, they are
8 very much like the one that Dante Howard had with
9 Yusef Phillips on August 2nd when he sent a woman in a black
10 car to pick up that bag. What's in the bag, ladies and
11 gentlemen? A kilogram of cocaine. And you know you can trust
12 the witness that testified about that because how in the name
13 of all that came in before you in this case could they have
14 orchestrated in retrospect the amount of information that they
15 would need to to make up information about each of these eight
16 defendants and coordinate it with each of their dropped phones
17 and all of the physical surveillance and all of the
18 surveillance of their stash houses?

19 Each of these defendants share something else in
20 common. The drugs they received came directly from those stash
21 houses where the search warrants were performed on the day of
22 the takedown. Everything you've heard and seen you have to
23 weigh together. It doesn't make sense by itself any more than
24 any one of those phone calls sitting in a vacuum would make
25 sense by itself. But the phone call, "I'll be there tomorrow."

1 "I'm coming." And then the surveillance of Ray Lee or
2 Yusef Phillips going into the stash house before they go and
3 meet with each one of these defendants or their couriers as
4 they came together. Another phone call, "I'm here." If you
5 put them in sequence, they make sense. If you put them in
6 sequence with all that was found in the stash house, it makes
7 sense. That is what you were called to do. To weigh the
8 evidence that was put before you in the course of this case.
9 All of the evidence. And that is the support. For each one of
10 these defendants there was correspondence of drugs going to or
11 from those stash houses in immediate proximity to the
12 deliveries to those defendants. The phone calls show you. How
13 would Yusef Phillips and Ray Lee -- Yusef Phillips who has been
14 shot and is in a hospital on September 3rd -- and
15 Salvador Cervantes coordinate this grand a story based upon
16 their drug phones they know they drop every 30 days?

17 If you look at Government Exhibit 7, which is the
18 chart of the target phones in the case that relate to what you
19 heard, the five separate phones that you heard in this case,
20 you'll see that we were not listening to Ray Lee's phones more
21 than 27 days total over three phones. How would Ray Lee and
22 Yusef Phillips for those 27 days coordinate an orchestrated
23 story which frames up each of these eight defendants with
24 Salvador Cervantes who began speaking, as he testified to, to
25 law enforcement on the day of his arrest about where he got the

1 drugs.

2 Mr. Lombard suggested to you that Salvador Cervantes
3 and Yusef Phillips, who did not even know each other's names
4 when they were meeting and delivering these drugs over a period
5 of years, decided during one of those big deliveries with
6 Mr. Castro's drugs, 10 kilos or hundreds of thousands of
7 dollars, "Hey, by the way, if we ever get caught, we're going
8 to be looking at lots of time, because this is a lot of drugs.
9 So let's come up with a good idea. And I've got a name. This
10 is a great name. A guy I know. You probably have him on your
11 phone. Do you have him on your phone too? Let's blame
12 Alex Castro just in case the DEA ever busts in and arrests us."

13 Ladies and gentlemen, that's preposterous. And they
14 could not have done it with regard to all the information you
15 saw in the investigation that showed what they were up to.
16 They could not thread the needle through all that
17 investigation.

18 And I'll show you why they couldn't. You saw an
19 example of someone who tried to do that in the course of this
20 case. That was Solon Tatum. He got up on the witness stand
21 and he testified, and he had to explain away five separate
22 phone calls and three separate meetings in parking lots. So he
23 gives you the T-clipper, right? That takes care of two
24 meetings. And then his credit-reporting business. Well, you
25 know that Solon Tatum lied to you. First because he lied on

1 the stand. The first thing he said, the first time he was up
2 on the stand when he was asked about whether or not he had a
3 license, he said, "I didn't really get around to it." But on
4 cross-examination he had to admit to you that his felony
5 conviction prevented him from getting around to it. That was a
6 lie.

7 He told you he earned \$110,000 in cash per year as a
8 barber, but he never paid taxes and he never registered his
9 business with the State of Michigan. Other lies.

10 But beyond that, what he told you on its face was a
11 lie. And you are called to use your common sense and your
12 experience in your lives as you assess the credibility of the
13 witnesses and the evidence in the case, and what Solon Tatum
14 told you was not credible.

15 He was driving across town to the Woodland Mall to
16 drop off clippers to Ray Lee who came into his barber shop?
17 When everybody else you heard from came to his barber shop for
18 the same reason? He was getting a box of a Food Saver which
19 was actually a scanner which he was purchasing for \$200?
20 Ray Lee has over \$400,000 in cash not five miles away and he's
21 going to sell somebody a scanner like it's on Craig's List for
22 200 bucks? And then he's going to go back to the same person
23 for credit counseling? Ray Lee doesn't need credit counseling.
24 Ray Lee needs a job, right? But he's got \$400,000 in cash. He
25 needs someplace to hide his money. That's not credit

1 counseling, ladies and gentlemen. Ray Lee is not the person to
2 drum up business for your credit-counseling business. Those
3 ideas are preposterous.

4 What happened in each one of the videos that you
5 watched in the course of this case for each one of these
6 individuals after Ray Lee or Yusef Phillips went to the stash
7 house to come and see them is exactly what it looked like,
8 someone surreptitiously delivering a box or drugs to another
9 car which the defendants then hid in their own car and drove
10 off. You saw cash exchanged in some cases. You saw boxes in
11 others. You saw Max Avery climb in the back of his Suburban to
12 hide 150 to a hundred grams of heroin for maybe two minutes
13 before he drove back to Indianapolis.

14 The evidence in this case when weighed together and
15 added together is clear. Each one of these defendants is
16 guilty as charged, and each one of the witnesses that testified
17 about their activity was supported not only by each other but
18 by all the evidence that surrounded the case. We ask you to
19 weigh all that evidence as a whole, to weigh each witness on
20 the basis of what they have told you, not whether or not you'd
21 listen to their advice on whether or not you'd get medical
22 treatment or buy a house but about the drug transaction they
23 were involved in. They are the best witness for that
24 transaction because they were there. And you know what they
25 are telling you about what happened is true because you

1 listened to it as it happened on their phone and you watched it
2 as it happened on the video and through the eyes of the law
3 enforcement officers there. Each defendant is guilty of
4 conspiracy. Those charged are guilty of possession with intent
5 to distribute on the days that you watched in the course of
6 this case. We ask you for a verdict consistent with that
7 evidence. Thank you.

8 *THE COURT:* All right. Well, thank you to counsel
9 all around. And thank you, Members of the Jury. You thought
10 the first two weeks were hard. This is -- this is a tough day
11 to be sitting and listening to even excellent lawyers give
12 their closing arguments uninterrupted from whenever we started
13 this morning after my instructions. I think that was about
14 10:00. It's a long day. I have about 10 more minutes of
15 instructions to give you, and I'm tired and I'm sure you're
16 more tired, so I'm going to ask you to come back tomorrow
17 morning, and this way if I leave you out now at 4:30, you can
18 still hopefully beat the traffic out of downtown. You can get
19 rested up so that you're ready to go tomorrow morning with
20 deliberations after I give you about 10 minutes of instructions
21 and come back at it fresh. And I think that's going to be a
22 better way to start.

23 It will also allow me to finish a hearing on a
24 completely unrelated case. People have been waiting around
25 since about 3:00 today because when we were scheduling we

1 thought today would still be a day that you left at 3:00. So
2 that, I think, is going to be easier than finishing the
3 instructions now and getting you set up.

4 The last thing is that the IT department of the court
5 will be setting up -- may have already done it -- but will be
6 setting up a monitor for you in the court -- or in the jury
7 room so that you, as you're deliberating, can pick and choose,
8 or listen to all of it if you want to, the intercepted phone
9 calls, the video, and look at, of course, all the paper
10 exhibits that were admitted. So that will give everybody time
11 to set that up so that when you hit the ground on deliberations
12 tomorrow you'll be as fresh and as equipped as you can possibly
13 be. So thank you for all of your attentions today. We'll give
14 you a chance to get out of town now before the rush, and we'll
15 see you tomorrow at 8:30. Thank you.

16 *(Jury exited the courtroom at 4:41 p.m.)*

17 *THE COURT:* All right. We'll be back tomorrow.
18 We'll have the jury officers sworn. We'll have the alternates
19 put in a separate place so that they are available in case
20 there's questions from the regular jury. My practice is to
21 bring them into the back so that they can hear the answers
22 along with the regular jury if that happens. And then if they
23 need to sub in, they can do it with the same information set
24 that the regular jury has.

25 So please have your exhibit books or your

1 thumb drives, whatever else, ready to go. You can give it to
2 Mr. Schmidt tonight or you can have it ready in the morning.
3 On one of the thumb drives, I'm not sure if it was the
4 government or the defense, when we tested it there was a
5 password. So if you want the jury to see it, you better make
6 sure we have the password.

7 So the last thing for tomorrow, I don't know how that
8 room downstairs is working out for the defense group, the
9 sub-basement.

10 *MR. LOMBARD:* I don't think anyone has used it,
11 actually.

12 *THE COURT:* Well, then you don't know how it's
13 working.

14 My concern in terms of tomorrow is if the jury comes
15 back with a question, getting the whole group assembled is a
16 bit of a logistical challenge. So please, at least when we get
17 started, maybe the defense group can check out that basement
18 room so that if they have a question in the first hour or so we
19 won't have to gather everybody up from wherever you're all
20 staying. And the government, maybe you can stay in your
21 facilities at least for the first hour or so.

22 Once they get into it and it's clear that they are
23 going to go awhile, or it seems like it, people can wander a
24 little bit. Just make sure we have a cell phone to get ahold
25 of everybody. The closer the better.

1 I really didn't expect to enjoy myself, you know, but
2 I have to say this went about as well as I could have imagined
3 with nine sets of lawyers. There was a ton of information. I
4 thought everybody on both sides were really adept at focusing
5 on what mattered to their respective case. And today was a
6 long day. I mean, it really was. But as I said before, I
7 don't think it was a long day because anybody was doing a lousy
8 job. I think it was a long day despite the fact that you were
9 all doing a great job.

10 So I know at the end of this case, despite what you
11 read on the wall in England, no matter what happens the crown
12 wins, well, if the crown doesn't get their position sustained,
13 they are going to be disappointed. And if the defense doesn't
14 get their position sustained, they are going to be
15 disappointed. I know that's going to happen whenever the jury
16 comes back. But I hope that, particularly from the client
17 perspectives at both tables, you realize that this group of
18 lawyers did just an outstanding job highlighting what needed to
19 be highlighted to give the jury insight into how you saw the
20 case. And truly I enjoyed it. I had a lot of fun. I'm not
21 saying I'm ready to do it again next week, but this was really
22 a great gathering of excellent lawyers in my view, and you made
23 my job a lot easier as a result. So thank you for all of that.

24 Are there things we need to cover today before we
25 finish, Mr. Baker?

1 *MR. BAKER:* Your Honor, I raised this with defense
2 counsel before we turned back our thumb drive. The VLC program
3 from Woodland Mall, I don't believe -- I don't know if the
4 court has an adaptable program, but in Windows Media for
5 occasional video sometimes they played upside down. I raised
6 that with the Court and I raised it for defense counsel. I
7 know the Court's normal practice is to play things in court.
8 If they ask about that, we could do that. But there was no fix
9 for what we had if you didn't have the VLC program.

10 *THE COURT:* All right. Well, we'll test out if we
11 have the thumb drive and equipment what it looks like. And I'm
12 not saying we won't come back into court. Particularly if the
13 jury is having troubles with the equipment. But I would like
14 to avoid it given the volume of material. And I also think for
15 the jury's own deliberations, I think if they can privately
16 assess what matters to them, they would be better off.

17 *MR. BAKER:* Agreed.

18 *THE COURT:* Are there other things from any of the
19 defense counsel?

20 *MS. CHARTIER:* No, Your Honor.

21 *THE COURT:* All right. Okay. See you tomorrow at
22 8:30.

23 *MR. BAKER:* Thank you, Your Honor.

24 *THE CLERK:* Court is in recess.

25 *(Proceeding concluded at 4:45 p.m.)*

1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.

3 I further certify that the transcript fees and format
4 comply with those prescribed by the court and the Judicial
5 Conference of the United States.

6
7 Date: May 1, 2019

8
9 **/s/ Glenda Trexler**

10 Glenda Trexler, CSR-1436, RPR, CRR
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21
22
23
24
25

EXAMINATION INDEX

PAGE

GABRIEL HOLMES

DIRECT EXAMINATION BY MR. NYAMFUKUDZA: 2391

CROSS-EXAMINATION BY MR. BAKER: 2395

EDDIE LAIRD

DIRECT EXAMINATION BY MR. NYAMFUKUDZA: 2396

CROSS-EXAMINATION BY MR. BAKER: 2400

HARRY KNOWLING

DIRECT EXAMINATION BY MR. NYAMFUKUDZA: 2401

CROSS-EXAMINATION BY MR. BAKER: 2409

ALEXIS GUIDICE

DIRECT EXAMINATION BY MS. CHARTIER: 2410

CROSS-EXAMINATION BY MR. BAKER: 2412

REDIRECT EXAMINATION BY MS. CHARTIER: 2412

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EXHIBIT INDEX

EXHIBIT

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